CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 197

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

CAROLINA FREIGHT CARRIERS CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA

FILED JUNE 20, 1941

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INDEX

	Original	Print
Record from D. C. U. S., Western District of North Carolina	1	1
Bill of complaint	1	1
Exhibit A—Report and order of I. C. C., Docket No. MC-2253	6-b	6
Order convening three-judge court	12	12
Order that hearing on motion for interlocutory injunction shall constitute a final hearing, etc	13	12
Answer of I. C. C.	15	13
Answer of United States of America	21	16
Defendants' requested findings of fact and conclusions of law	23	17
Findings of fact and conclusions of law	31	22
Opinion, Parker, J.	36	25
Decree	47	34
Petition for appeal	48	35
Assignments of error	50	35
Order allowing appeal	63	37
Citation and service [omitted in printing]	66	38
Notice of appeal to attorney general of North Carolina [omitted in printing]	68	
Docket entries	71	38
Praecipe for transcript of record	72	39

	Original	Print
Record from D. C. U. S., Western District of No. Carolina—Con.		
Statement of evidence at hearing before I. C. C., Docket No. MC-2253	77	40
Caption and appearances	77	41
Testimony of—		
H. M. Nicholson	84	43
C. Grier Beam	88	45
Ed Sullivan, Jr.	106	56
J. A. Blackwelder	128	68
J. T. Griffis	141	75
A. D. Eubanks	172	92
Webb Dellinger	184	98
J. R. Mauney	213	114
Orlando Hudson	233	125
C. Grier Beam (recalled)	282	152
Exhibit No. 1 (Witness Beam)—Statement showing shipments transported by Mauney Transfer Co., Inc., and/or Carolina Freight Carriers Corp.	288	155
Exhibit No. 2 (Witness Beam)—Registration of Mauney Transfer Co	299	163
Exhibit No. 3 (Witness Griffis)—Statement showing shipments transported by Mauney Transfer Co	301	166
Exhibit No. 4 (Witness Beam)—List of shipments showing date, shipper and consignee	302	167
Clerk's certificates [omitted in printing]	324	178
Statement of points to be relied upon and designation of parts of record to be printed	326	178

1 In the District Court of the United States for the Western District of North Carolina

(Charlotte Division)

Civil Action File No. 139

CAROLINA FREIGHT CARRIERS CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Bill of complaint

The plaintiff, complaining of the defendants, alleges:

I

That the plaintiff is a corporation organized and existing under the laws of the State of North Carolina with its principal office and place of business in the town of Cherryville, Gaston County, North Carolina, and in the Western District of North Carolina, and as such is engaged in business as a common carrier by motor vehicle in interstate commerce.

II

That this action arises under the Act of Congress, approved August 9, 1935, and amendments thereto, and is reported in United States Code, Title 49, Sections 301 to 327, as hereinafter more fully appears.

III

That pursuant to the "grandfather" clause of Section 206 (a) of the motor carrier Act, 1935, plaintiff's predecessor, the Mauney Transfer Company, Incorporated, of Cherryville, North Carolina, filed in due form its application with the Interstate Commerce Commission requesting a certificate authorizing operation as a common carrier by motor vehicle in interstate or foreign commerce of general commodities (except commodities of unusual value, those in bulk, those requiring special equipment such as tank or refrigerator trucks, those injurious to other lading, live stock, automobiles and high explosives) between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, those in Virginia east of and

including the Shenandoah Valley, those in Maryland and
2 Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghamton and south of Albany; and between Cherryville and Boston, Mass., through Henderson, N. C., Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, over irregular routes.

IV

That subsequently on March 8, 1937, pursuant to an order made and approved by the Interstate Commerce Commission the plaintiff herein, Carolina Freight Carriers Corporation, was substituted as applicant in lieu of Mauney Transfer Company, Incorporated, and thereafter on Oct. 28, 1938, a hearing was had before Hon. W. W. McCaslin, Examiner for the Bureau of Motor Carriers of the Interstate Commerce Commission at Charlotte, North Carolina. At this hearing no evidence was offered in opposition to the application, and upon the examiner's recommended report and order being served on the parties, exceptions were filed and thereafter on July 10, 1940, Division 5 of the Interstate Commerce Commission which has general authority over motor carrier matters, made its findings in a report and order, a copy of which is hereto annexed, marked "Exhibit A" and made a part of this paragraph of this complaint.

V

That except as expressly enumerated in said report and order, Exhibit "A" as aforesaid, the application of plaintiff was wholly denied. Plaintiff excepted to said report and asked reconsideration by the Interstate Commerce Commission. The effective date of the report and order, Exhibit "A," was extended to August 31, 1940, and subsequently extended to September 30, 1940. Plaintiff has now been notified that no relief will be granted to it from the effects of said order and report, "Exhibit A," and that the same will become final on December 5, 1940.

VI

That plaintiff has exhausted every recourse to have said order and report, "Exhibit A" reformed so as to grant to the plaintiff those transportation rights which it verily believes the evidence
3 reveals it to be entitled and fully authorized under the "grandfather" provisions of the motor carrier Act; and this action is brought to restrain, enjoin, and stay the effective date of said report and order, "Exhibit A" and permit plaintiff's cause to be reviewed by a Court of Competent Jurisdiction

to the end that said order may be reformed and plaintiff permitted to acquire the operating rights to which it is justly entitled.

VII

That plaintiff and its predecessor, Mauney Transfer Company, Incorporated, have been in the active and continuous operation of motor vehicles as common carriers of freight in interstate commerce since March 1931; and were registered under the Code of Fair Competition for the Trucking Industry on July 11, 1934. That on the effective date of the Motor Carriers Act of 1935 plaintiff's predecessor in operation owned and operated 14 pieces of equipment in its business of transporting various classes of commodities; and as plaintiff is informed and believes, such varied class and classes of property lawfully constitute what is generally known as general commodities.

VIII

That the final order of the Commission is arbitrary and capricious and based on a wrong reading of the authority which the Act of Congress, known as the Motor Carrier Act of 1935, vested in the Commission; and the recitals and findings of fact in said order, "Exhibit A" are contrary to and against the weight of the evidence offered at the hearing, for that:

(a) Plaintiff is a common carrier over irregular routes within a specified territory, and as plaintiff is informed and believes, as such, in order to furnish the services which the public demands and has the right to expect, plaintiff must hold itself out to the general public as ready, able, and willing to accept for transportation, and actually transport general commodities, or any kind of commodities, that its equipment can transport within the limits of its territory.

(b) The Motor Carrier Act of 1935 does not specify how
4 many different commodities must be considered to constitute "general commodities"; and the evidence of the Hearing Examiner shows that plaintiff undertook to transport and did transport prior to June 1, 1935, and since every commodity which it could obtain for carriage; and that plaintiff did actually transport sufficient varied classes of property to constitute general commodities.

(c) The recital in said order, "Exhibit A," that plaintiff or other common carriers over irregular routes "handle the cream of the traffic available thereon in so-called irregular routes" is not supported by any evidence or fact; and as plaintiff is informed and believes the true statement of fact is that the irregular com-

mon carrier service, such as plaintiff renders, serves a very definite public need in the transportation of low-class commodities which common carriers over regular routes refuse to transport except at a premium or much higher rate.

IX

That as plaintiff is informed and believes the Interstate Commerce Commission, through its Hearing Examiner, acted arbitrarily and capriciously in refusing to hear or consider evidence that would directly tend to show that plaintiff was entitled under the law to be given authority to transport general commodities over irregular routes within the territory described in plaintiff's application, for that:

(a) Although plaintiff and its predecessor had been in business since March 1931, the Hearing Examiner refused to hear or consider any evidence of commodities transported during the years 1931, 1932, and 1933; and only considered a small portion of shipments made during 1934; and further strenuously endeavored to have plaintiff confine its evidence of commodities transported to the short period from January 1, 1935, to June 1, 1935.

(b) Oral testimony of commodities transported was almost completely disregarded or minimized to an extreme absurdity.

(c) Documentary evidence was in some instances disregarded and not considered.

5

X

That the construction and interpretation of the Motor Vehicle Act of 1935 as made by the Interstate Commerce Commission in passing upon the application of plaintiff is unsound in principle, unwarranted by the facts, capricious, arbitrary and not in keeping with the letter or spirit of the Act, for that—

(a) The plaintiff operating over irregular routes in a given territory could not afford to and did not restrict its operations to the transportation of a few commodities between a few points.

(b) Under the existing order and contrary to the intent of Congress, the plaintiff would be driven out of business at the moment it transports no commodities which it transported prior to June 1, 1935, or no longer transported said commodities between the same points.

(c) As plaintiff is informed and believes the great number of persons, firms and corporations engaged in the business of motor transportation under the designation of common carriers over irregular routes, compose almost 75% of all common carriers by motor vehicles, and the merit of plaintiff's contentions as to the

correct principles of law effecting franchise rights in this action, likewise, materially effect every other common carrier over irregular routes.

XI

That as heretofore stated applicant and his predecessor in operation have been engaged in the business of common carriers over irregular routes since March 1931. During such time, through constant application of personal energies and business judgment together with the purpose and desire to render the best possible service to the general public, a motor transportation business has been developed, until at the present, plaintiff has 61 pieces of modern motor transportation equipment, having a valuation of at least $120,000.00. The business furnishes employment for 94 persons whose annual earnings will average the total of $127,000.00, and the annual turnover of business done by
6 plaintiff will approximate $400,000.00. That the operations of plaintiff which have developed its present efficient business organization have been lawfully performed under the existing laws, rules and regulations of the Interstate Commerce Commission and with the knowledge and consent of said Commission.

XII

That if the existing order of the Interstate Commerce Commission, "Exhibit A," relating to the "grandfather" rights of plaintiff is allowed to become effective in its present form, the plaintiff will sustain irreparable injury, loss, and damage for which it has adequate remedy, for that:

(a) The presently operated franchise of plaintiff will be so limited and restricted by the terms and conditions of said order to the commodities which may be transported and the points and places to be served, that plaintiff will have no choice but to discontinue its operation with the resultant loss of the life earnings and savings of the stockholders of plaintiff in the proximate sum of $120,000.00; and likewise deprive 94 wage earners and their families of an annual income of $127,000.00; and if, upon the final hearing of this cause plaintiff shall prevail, the business is of such nature and the competition therefor so keen, that the same may be completely lost within a short time and would be impossible to regain even over a period of years.

(b) The granting of the restraining order staying the effective date of the proposed order until the cause of the plaintiff can be reviewed by the Court will not work any hardship on the defendants or other interested parties.

Wherefore, plaintiff prays the Court:

First: For an order restraining and staying the effective date and enjoining the enforcement of the order, "Exhibit A," issued by the Interstate Commerce Commission relating to the "grandfather" rights of plaintiff to become and remain a common carrier over irregular routes in accord with its legal rights under
6a the application heretofore filed with the Interstate Commerce Commission.

Second: For judgment annulling and setting aside the existing order, "Exhibit A."

Third: For an order directing the Interstate Commerce Commission to review Plaintiff's case under a proper interpretation and construction of the Statute, and thereon issue a reformed order so as to permit the plaintiff to be granted franchise rights as a common carrier over irregular routes in accord with its just rights under the law.

Fourth: For such other and further relief as plaintiff may be entitled.

R. G. CHERRY,
R. G. Cherry,
Attorney for Plaintiff, Gastonia, North Carolina.

[*Duly sworn to by C. G. Beam; jurat omitted in printing.*]

6b *Exhibit A to bill of complaint*

Interstate Commerce Commission

No. MC–2253

CAROLINA FREIGHT CARRIERS CORPORATION COMMON CARRIER APPLICATION

Submitted September 8, 1939. Decided July 10, 1940

Applicant found entitled to continue operation as a common carrier by motor vehicle of specific commodities between specified points in South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts, because its predecessor was engaged in such operation on June 1, 1935, and it and its predecessor have been so engaged continuously since. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.

Norman Block and Thaxton Richardson for applicant.

A. P. Toxey, J. D. Lawson, and R. St. Amand for protestants.

REPORT OF THE COMMISSION

Division 5, Commissioners LEE, ROGERS, and PATTERSON by Division 5:

Exceptions were filed by applicant and rail carrier protestants to the recommended order of the examiner. Our conclusions differ somewhat from those recommended.

By application filed January 24, 1936, under the "Grandfather" clause of section 206 (a) of the motor Carrier Act, 1935, Carolina Freight Carriers Corporation of Cherryville, N. C., seeks a certificate of public convenience and necessiety, authorizing operation as a common carrier by motor vehicle in interstate or foreign commerce of general commodities with certain exceptions, between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, and those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghamton and south of Albany, over irregular routes, and between Cherryville and Boston, Mass., over a regular route through Henderson, N. C., Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y. Rail Carriers in Southern and Official Classification territories and
6c certain motor carriers operating in the territory involved opposed the application but offered no evidence.

Motor carrier operations were commenced by applicant's predecessor about 1931. At that time, it had about three trucks, which number had been increased to about six or eight on June 1, 1935, and at the time of the hearing, it had about 16 cargo-carrying units in operation. Present applicant was incorporated in March 1937, the exact date does not appear of record, and has conducted the operation since that time. Reference hereinafter to applicant will mean applicant's predecessor until March, 1937, and the present applicant thereafter.

Application was registered under the code of fair competition for the trucking industry on July 11, 1934. The certificate of registration, signed by applicant's general manager, was submitted in evidence. It contains statements to the effect that 60 percent of applicant's operations were those of a contract carrier and 40 percent of its operations were those of a "anywhere for hire carrier"; that 90 percent of its traffic consisted of textile products and 10 percent consisted of "rough freight"; and that operations were conducted in North Carolina, Virginia, Maryland, Pennsylvania, New Jersey, New York, and the District of Columbia. Operations are said to have been conducted approximately to the same extent since that time. It was explained that "rough freight" meant all freight other than textile products. It does

not appear that applicant's operations were performed for the public generally. In view thereof, it is clear that applicants' operations were, and are, those of a common carrier. All operations have been conducted on a "call and demand" basis over irregular routes.

An exhibit comprising a list of shipments handled during the period from 1934 to 1936, inclusive, and also a few shipments handled during 1937, was submitted in evidence to show the scope of applicant's operations. This list, it is asserted, is incomplete because all records of shipments handled during that period had not been preserved. It is supplemented by the testimony of applicant's employees and by shipper witnesses. The evidence
6d clearly establishes that practically all of applicants' northbound operations prior to June 1, 1935 consisted of the transportation of cotton yarn from Clover, S. C., and points in North Carolina within 75 miles of Cherryville to Baltimore, Elk Mills, and Hagerstown, Md., Wilmington, Del., points in Pennsylvania on and east of U. S. Highway 11, points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J., New York, Newburgh, and Clark Mills, N. Y., and to about ten points in Massachusetts and five points each in Rhode Island and Connecticut. A few shipments of other commodities including tires and tubes, asbestos textile products, spools, and empty boxes, were also transported northbound. Prior to June 1, 1935, the evidence shows that southbound shipments consisted of a variety of commodities destined to a few points in Virginia and South Carolina and to points scattered throughout North Carolina.

Applicant also submitted an exhibit compiled from freight bills covering shipments transported during the period from January 1, 1937, up to the time of the hearing, showing origin and destination points and the Commodities handled. Although, it is claimed that this list of shipments does not show all traffic handled during the period it covers, it is said to be representative of the operation conducted during that period. This exhibit was submitted to show the scope of the operation as conducted after June 1, 1935. The exhibit will be considered as showing the extent of applicant's operation after June 1, 1935, except insofar as it is clearly supplemented by specific testimony.

Of approximately 430 shipments shown to have been handled during 1937 and 1938, 260 consisted of cotton yarn and 5 of asbestos yarn moving from North Carolina to northern destinations and 85 consisted of commodities not shown to have been handled prior to June 1, 1935. Of the 80 remaining shipments, approximately 65 consisted of petroleum products in containers, linoleum, canned

goods, beer and ale, and roofing materials moving from northern points to certain points in North Carolina and South Carolina.

The remaining shipments consisted of various commodities
7 moving between points which were not served prior to June 1, 1935, or which have been handled infrequently.

Considering all the evidence, the commodities shown to have been handled with a degree of regularity both prior to and since June 1, 1935, are cotton yarn, petroleum products, linoleum, canned goods, beer, ale, roofing, screen wire, asbestos textile products, materials used in the manufacture of asbestos textile products, and empty spools and boxes.

Although the evidence shows that most of the shipments of cotton yarn handled by applicant moved principally from Cherryville, Marion, Gastonia, Taylorsville, Lincolnton, Stanley, Maiden, Salisbury, and Belmont, N. C., and Clover, S. C., the record establishes that applicant held itself out to transport this commodity from all points in a territory in North Carolina comprising the counties of Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie, and actually conducted an operation consistent with such holding out. Since prior to June 1, 1935, these shipments of yarn are shown to have moved with a fair degree of regularity to Hagerstown, New York, Providence and Pawtucket, R. I., to points in that part of Pennsylvania on and east of U. S. Highway 11, and points in New Jersey in Middlesex, Union, Essex, Hudson, Bergen, Somerset, and Morris Counties.

The traffic manager for an asbestos textile company at Charlotte, N. C., testified that prior to and since June 1, 1935, applicant has transported its products from Charlotte, N. C., to points in northern States and supplies on return trips. Although this witness stated that his Company required service to all points in a number of States, the only points shown to have been served in the transportation of its products, from Charlotte, are Philadelphia, and North Wales, Pa., Trenton, N. J., Newark, Passaic, and Paterson, N. J., and New York, Middleton, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass.; supplies from Harrison and Perth Amboy, N. J., to Charlotte, and empty spools and boxes in the reverse direction.

Petroleum products in containers where transported from Sewarren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to points throughout North Carolina; lino-
8 leum from Paulsboro, N. J., Marcus Hook, and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C.; canned goods from Baltimore, Md., to Shelby, N. C.; beer and ale from Newark, N. J., to Gastonia and Wades-

boro, N. C.; and roofing and screen wire from York, Pa., to points in North Carolina.

On exceptions, applicant contends that prior to June 1, 1935, and continuously since, it has held itself out to transport general commodities throughout the territory covered by the application. This is contradicted to some extent by the testimony of predecessor's general manager, who testified that no business was solicited north of New York and only occasional loads were handled there. Furthermore, we have frequently stated that authority to transport general commodities throughout a wide territory, over irregular and unspecified routes pursuant to the "grandfather" clauses of the act, should be granted to a carrier only when such carrier's right thereto has been proved by substantial evidence. To do otherwise would create the very ills which regulation is designed to alleviate, namely, congestion of highways, destructive rate practices and unbridled competition. Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so called irregular route service. Considering all the evidence, it is clear that no substantial showing of service has been made to establish bona fide irregular route operations in the transportation of general commodities from and to all points in the States included in the application.

Applicant also contends that a carrier who has filed an application under the "Grandfather" clause of section 206 (a) of the act may not be restricted to the transportation of the commodities carried on June 1, 1935. Section 203 (a) (14) of the act contemplates that a common carrier may transport only a "class or classes of property" and we have found in numerous cases,

9 that the authority issued under the "grandfather" clauses of section 206 (a) and 209 (a) of the act should reflect any limitation in the undertaking of common or contract carriers as indicated by the service actually rendered on and since the statutory dates.

We find that applicants predecessor in interest was on June 1, 1935, and continuously since it and its predecessor have been in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce, of (1) cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket, and Providence, R. I., to all points in Pennsylvania on and east of U. S. Highway 11, and to points in Middlesex, Union, Essex,

Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J.; (2) asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass.; (3) supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction; (4) petroleum products in containers from Sewarren, N. J., and Marcus Hook, Penn., to Columbia and Greenville, S. C., and to all points in North Carolina; (5) linoleum from Paulsboro, N. J., Marcus Hook, Pennsylvania, and East Walpole, Mass., to points in North Carolina and to Spartansburg and Greenville, S. C.; (6) canned goods from Baltimore, Md., to Shelby, N. C.; (7) beer and ale from Newark, N. J., to Gastonia and Wadesboro, North Carolina; and (8) roofing and screen wire from York, Pennsylvania, to all points in North Carolina; all over irregular routes; that applicant is entitled to a certificate authorizing continuation of such operation; and that the application in all other respects should be denied.

10 Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the application except to the extent granted by our findings herein.

11 *Order*

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 10th day of July, A. D. 1940.

No. MC–2253

CAROLINA FREIGHT CARRIERS CORPORATION COMMON CARRIER APPLICATION

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered that said application, except to the extent a certificate is granted by the findings in said report, be, and it is hereby, denied, effective August 31, 1940.

By the Commission, division 5.

[SEAL] W. P. BARTEL, *Secretary.*

12 In United States District Court

[Title omitted.]

Order convening three-judge court

In the above entitled case brought to enjoin the enforcement of an order of the Interstate Commerce Commission, plaintiffs having applied for an interlocutory injunction, I hereby call to my assistance Honorable John J. Parker, Honorable Armistead M. Dobie, United States Circuit Judges for the Fourth Judicial Circuit, to sit with me as a Court of three judges for the hearing of said case.

Done at Charlotte, North Carolina, this the 8th day of January 1941.

E. Y. Webb,
U. S. District Judge for the
Western District of North Carolina.

13 In United States District Court

[Title omitted.]

Order as to hearing, etc.

This cause coming on to be heard before Honorable John J. Parker, United States Circuit Court Judge, Honorable Armistead M. Dobie, United States Circuit Court Judge, and Honorable E. Y. Webb, United States District Court Judge, at Charlotte, North Carolina, at 10 o'clock A. M. on January 8, 1941, and being heard, it was stipulated and agreed by and between all parties in open court that the hearing today on the motion of plaintiff for an interlocutory injunction shall also at this time be and constitute a final hearing of this cause, and it is ordered that defendant, United States of America be allowed ten days in which to file answer.

At the conclusion of the hearing it is further ordered and adjudged by the Court that during the pendency of this action, and until the final decision by the Court upon matters in controversy, the plaintiff be, and it is hereby granted an interlocutory injunction against the defendants, and to that end the defendants, and each of them, their officers, agents and employees, be and they are hereby restrained and enjoined from enforcing the final order issued by the Interstate Commerce Commission upon the application for Grandfather rights by plaintiff upon Docket No. MC-2253, as described in plaintiff's complaint, or in any

manner interfering with the continued operation of plaintiff as a motor carrier.

It is further ordered that the plaintiff shall have thirty days in which to file certified transcript of the evidence offered at the hearing and brief on its part, and that the intervener allowed
14 at this hearing also is authorized to file brief at any time within thirty days and that the defendants shall have twenty days thereafter in which to file their briefs or counter-briefs, and that plaintiff shall have ten days thereafter in which to file a reply to the briefs of defendants.

This cause retained for further orders by the Court.

JOHN J. PARKER,
United States Circuit Judge.
ARMISTEAD M. DOBIE,
United States Circuit Judge.
E. Y. WEBB,
United States District Judge.

15 In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-named suit, for answer to the complaint filed herein, says:

I

Answering paragraphs I, II, and III of the complaint, the Commission, for the purposes of this suit, admits that the allegations therein contained are true.

II

Answering paragraph IV, V, and VI of the complaint, the Commission alleges and says that on or about March 8, 1937, the plaintiff, Carolina Freight Carriers Corporation, by order of the Commission was substituted as applicant in lieu
16 of the Mauney Transfer Company, Inc., in the "grandfather" application referred to in paragraph III of the complaint; that upon said application the Commission instituted a proceeding designated No. MC 2253, Carolina Freight Carriers Corporation Common Carrier Application; that divers protests were filed wherein the granting of said application was objected

to; that on or about October 28, 1938, a hearing was held before a Commission examiner for the purpose of the receipt of evidence and the presentation of a recommended report; that at said hearing all parties, including the plaintiff, were afforded a full hearing; that at said hearing the protestants called no witnesses, but there was evidence in opposition to the granting of the application developed in the testimony of witnesses called by the applicant; that at said hearing a large volume of testimony and other evidence was received, including evidence adduced by and on behalf of the plaintiff; that thereupon a recommended report and an order were prepared by the examiner and served upon all parties in the proceeding, to which recommended report exceptions were filed by the applicant and also by the protestants; that thereafter, on July 10, 1940, the Commission, acting through its Division 5, made its report and order, true copies of which are attached to the complaint herein as Exhibit A, said report being officially reported in 24 Motor Carrier Cases (M. C. C.), beginning at page 305; that in and by said report and order the applicant was found to be entitled to a "grandfather" certificate authorizing continuance of

17 transportation by it as a common carrier by motor vehicle in interstate or foreign commerce: (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11, and points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J., (2) of asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass., (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction, (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina, (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C., (6) of canned goods from Baltimore, Md., to Shelby, N. C., (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes; that in and by said report and order the Commission denied plaintiff's application in all other respects; that the order of the Commission was originally made effective

August 31, 1940, but that by successive subsequent orders the Commission extended the effective date of its said report and order to December 5, 1940.

18 The Commission further alleges that the findings and conclusions stated in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding; that said order was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it; that in making said order the Commission did not misconstrue the law or exceed the authority duly conferred upon it.

That subsequent to the issuance of said report and order of July 10, 1940, by Division 5 of the Commission, the plaintiff, on or about September 12, 1940, filed its petition for reconsideration and for an indefinite postponement of the effective date of the order; that on November 4, 1940, the full Commission, after due consideration of said motion denied the same.

III

Answering paragraphs VII, VIII, IX, X, XI, and XII of the complaint, the Commission denies the allegations therein contained.

Especially answering paragraph IX of the complaint, the Commission denies that its examiner acted arbitrarily or capriciously in the admission of evidence at the hearing before him or in any other respect, and the Commission alleges and shows that at no time prior to the issuance of its report and order of July 10, 1940, was any complaint or objection made to it concerning the conduct or rulings of the examiner.

19 IV

Except as herein expressly admitted the Commission denies the truth of each of and all the allegations contained in the complaint, especially in so far as they conflict either with the allegations herein contained or with the allegations or conclusions of fact contained in said report and order of July 10, 1940.

Wherefore the Commission prays that said complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By NELSON THOMAS, *Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

425576—41——2

20 [*Duly sworn to by John L. Rogers; jurat omitted in printing.*]

21 In United States District Court

[Title omitted.]

Answer of the United States of America

The defendant, United States of America:

1. Admits the allegations of paragraphs I, II, and III.

2. Denies the allegations of paragraphs VII, VIII, IX, X, XI, and XII.

3. Admits the allegations of paragraphs IV, V, and VI to the extent that they are consistent with the statements of the proceedings contained in the Commission's report of July 10, 1940, and denies those which are inconsistent therewith.

4. Admits all other allegations which are consistent with the findings of the Commission contained in its report or with the evidence of record before the Commission, and denies those which are inconsistent therewith; and is without knowledge or information sufficient to form a belief as to the truth of all other allegations of the complaint.

FRANK COLEMAN,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Counsel for the United States.
THURMAN ARNOLD,
Assistant Attorney General.
THERON L. CAUDLE, Esq.,
United States Attorney.

22 I certify that a true copy of the foregoing Answer of the United States of America was this day mailed to the following persons:

R. G. CHERRY, Esq.,
Post Office Box 947, Gastonia, North Carolina,
Counsel for Plaintiff.
NELSON THOMAS, Esq.,
Washington, D. C.,
Counsel for Interstate Commerce Commission.
FRANK COLEMAN,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Counsel for the United States.

JANUARY 9, 1941.

23 In United States District Court

[Title omitted.]

Findings of fact and conclusions of law

(Requested by Defendants United States and Interstate Commerce Commission)

In the above-entitled cause the Court makes the following findings of fact:

FINDINGS OF FACT

1. Plaintiff, Carolina Freight Carriers Corporation, is a corporation organized and existing under the laws of the State of North Carolina, with its principal office and place of business in the Town of Cherryville, Gaston County, N. C., in the Western Judicial District of North Carolina.

It has filed this suit under the Act of Congress approved August 9, 1935, and amendments thereto and the Urgent Deficiencies Act of October 22, 1913, to set aside an order of the Interstate Commerce Commission as hereinafter described, denying the application of the plaintiff for a certificate authorizing certain operations as a common carrier by motor vehicle and

24 for a further order directing the Interstate Commerce Commission to review plaintiff's application and to issue thereon an order so worded as to authorize motor carrier operations by plaintiff as prayed in its bill of complaint.

2. That plaintiff's predecessor, Mauney Transfer Company, Inc., on or about 1936, filed with the Commission an application under the "grandfather" clause of Section 206 (a) of the Motor Carrier Act, 1935, for a certificate of public convenience and necessity authorizing operation as a common carrier by motor vehicle in interstate or foreign commerce of general commodities, with certain exceptions, between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, and Massachusetts, and those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghamton and South of Albany over irregular routes, and between Cherryville and Boston, Mass., over a regular route through North Carolina, Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y. That subsequently the plaintiff acquired the rights of said Mauney Transfer Co., Inc., if any, sought in and by said application and was by the Commission duly substituted as applicant in lieu and stead of said Mauney Transfer Company.

3. That certain rail carriers and motor carriers operating in and through the territory involved intervened in the Commission proceeding and filed their protests opposing the application.

4. That said application and the protests thereto were desig-
nated by the Commission as proceeding No. MC-2253,
25 Carolina Freight Carriers Corporation Common Carrier
Application, and said proceeding was set down for hearing before a Commission examiner, at which hearing the plaintiff, as applicant, called witnesses and introduced evidence in support of its application. Protestant rail and motor carriers also appeared and cross-examined the applicant's witnesses.

5. That in due time the examiner prepared and presented to the Commission his proposed report, which was duly served upon all parties to the proceeding, including the plaintiff-applicant, and both plaintiff and protestants filed their exceptions to said proposed report. The applicant and the protestants also filed their written and printed briefs with the Commission.

6. Whereupon the Commission, on July 10, 1940, made its report and order (reported 24 M. C. C. 305), which differed in some respects from the report and order recommended by the examiner. Said report and order, a copy of which is attached as Exhibit A to the complaint herein, grants in part and in part denies plaintiff's application.

7. That before the Commission the applicant contended that continuously since prior to June 1, 1936, it had held itself out to transport general commodities throughout all the territory covered by the application and that it became thereby entitled to a certificate as prayed in its application. The Commission in its report held that authority to transport general commodities throughout a wide territory over irregular and unspecified routes pursuant to the "grandfather" clauses of the Motor Carrier Act
of 1935 should be granted to a carrier only when such car-
26 rier's right thereto had been proved by substantial evidence,
and that the applicant had made no substantial showing of service to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the states included in the application.

8. That before the Commission the applicant contended that a carrier who had filed an application under the "grandfather" clause of Section 206 (a) of the Motor Carrier Act of 1935 could not be restricted in the "grandfather" certificate issued by the Commission to the transportation of the commodities carried on June 1, 1935. The Commission in its report (p. 309) held that Section 203 (a) (14) of said Act contemplates that a common carrier may transport a "class or classes of property" and that the

authority issued under the "grandfather" clauses of Sections 206 (a) and 209 (a) of the Act should reflect any limitation in the undertaking of common or contract carriers as indicated by the service actually rendered on and since the statutory dates.

9. A certified copy of all the evidence before the Commission has been introduced in evidence herein, and considering the same under the construction of the law above stated, the Commission has concluded that all operations of the plaintiff and its predecessor have been conducted on a "call on demand" basis over irregular routes; that practically all the applicant's north-bound operations prior to June 1, 1935, consisted of the transportation of cotton yarn from Clover, S. C., and points in North Carolina within 75 miles of Cherryville, to Baltimore, Elk Mills, and Hagerstown, Md., Wilmington, Del., points in Pennsylvania on and east of U. S. Highway 11, points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties,
27 New Jersey, New York, Newburgh, and Clark Mills, N. Y., and about ten points in Massachusetts and five points each in Rhode Island and Connecticut; that a few shipments of other commodities, including tires and tubes, asbestos textile products, spools and empty boxes were also transported northbound; that prior to June 1, 1935, southbound shipments consisted of a variety of commodities destined to a few points in Virginia and South Carolina and to scattered points throughout North Carolina; that of approximately 430 shipments shown to have been handled during 1937 and 1938, 260 consisted of cotton yarn and 5 of asbestos yarn moving from North Carolina to northern destinations and 85 consisted of commodities not shown to have been handled prior to June 1, 1935; that of the 80 remaining shipments, approximately 65 consisted of petroleum products in containers, linoleum, canned goods, beer and ale, and roofing materials moving from northern points to certain points in North Carolina and South Carolina; that the remaining shipments consisted of various commodities moving between points which were not served prior to June 1, 1935, or which have been handled infrequently; that on the basis of all the evidence, the commodities shown to have been handled with a degree of regularity both prior to and since June 1, 1935, are cotton yarn, petroleum products, linoleum, canned goods, beer, ale, roofing, screen wire, asbestos textile products, materials used in the manufacture of asbestos textile products, and empty spools and boxes; that applicant held itself out to transport cotton yarn from all points in a territory in North Carolina comprising the counties of Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie, and actu-
28 ally conducted an operation consistent with such holding out,

although said shipments moved principally from Cherryville, Marion, Gastonia, Taylorsville, Lincolnton, Stanley, Maiden, Salisbury, and Belmont, N. C., and Clover, S. C.; that the only points served in the transportation of asbestos textile products from Charlotte, N. C., were to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, Middletown, Conn., Providence and Pawtucket, and Boston and Hudson, Mass., with supplies being carried from Harrison and Perth Amboy, N. J., to Charlotte, and empty spools and boxes in the reverse direction; that petroleum products in containers were transported from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to points throughout North Carolina; that also transported were linoleum from Paulsboro, N. J., Marcus Hook, and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C., canned goods from Baltimore, Md., to Shelby, N. C., beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and roofing and screen wire from York, Pa., to points in North Carolina.

10. In conclusion the Commission found (p. 309) that the applicant's predecessor in interest was on June 1, 1935, and continuously since it and its predecessor have been in bona fide operation as a common carrier by motor vehicle in interstate or foreign commerce (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11, and points in Middlesex, Union, Essex, Hudson, Passaic, Bergen,
29 Somerset, and Morris Counties, N. J., (2) of asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass., (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction, (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina, (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C., (6) of canned goods from Baltimore, Md., to Shelby, N. C., (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes; that applicant is entitled to

a certificate authorizing continuation of such operation; and that the application in all other respects should be denied.

11. That the applicant has duly applied to the Commission for a reconsideration, and the Commission has denied the same.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

1. The Commission's report and order of July 10, 1940, and its denial of the plaintiff's application for a "grandfather" certificate permitting operation as prayed in its application to the Commission and in its complaint herein were justified and constitute a valid exercise of the Commission's powers under the Motor Carrier Act of 1935.

30 2. The findings set forth in the Commission's report considered as a whole, are sufficient in law to sustain and justify the order made by the Commission denying plaintiff's application to the extent stated in said report and order.

3. The action of the Commission upon plaintiff's application was a valid exercise of the Commission's legal powers and was warranted by the facts and circumstances shown in the Commission record.

4. The construction of the law applied by the Commission in its report and order was and is correct and in accordance with the law.

5. There was in the Commission record substantial evidence to sustain the findings of the report and the order of the Commission.

6. The relief which plaintiff prays should be denied and its suit dismissed for want of equity.

_____,
United States Circuit Judge.

_____,
United States District Judge.

_____,
United States District Judge.

31 In the District Court of the United States for the Western District of North Carolina

CAROLINA FREIGHT CARRIERS CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Findings of fact and conclusions of law.

Findings of fact

The Court makes the following findings of fact:

1. That plaintiff is a corporation organized and existing under the laws of the State of North Carolina and as such is engaged as a common carrier by motor vehicle in interstate commerce.

2. That a plaintiff is the successor of the Mauney Transfer Company, a corporation created and existing under the laws of North Carolina, which was engaged as a common carrier by motor vehicle in interstate commerce on and for some time prior to June 1, 1935.

3. That, on January 24, 1936, the Mauney Transfer Company filed in due form its application with the Interstate Commerce Commission, under the "grandfather" clause of section 206 (a) of the Motor Carrier Act of 1935, requesting a certificate authorizing operation as a common carrier by motor vehicle in interstate or foreign commerce of general commodities (except commodities of unusual value, those in bulk, those requiring special equipment such as tank or refrigerator trucks, those injurious to other lading, live stock, automobiles and high explosives) between all points in South Carolina, North Carolina Delaware, New Jersey, Connecti-
32 cut, Rhode Island, Massachusetts, those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghamton and south of Albany; and between Cherryville and Boston, Mass., through Henderson, N. C., Richmond Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y., over irregular routes.

4. That plaintiff, with its predecessor, the Mauney Transfer Company, has been operating as a common carrier of freight in interstate commerce by irregular routes since 1931 in a territory which may be roughly described as lying along the Atlantic Seaboard between New York and New England on the north and the Carolinas on the south; that plaintiff and its predecessor have been holding themselves out as a common carrier in this territory and accepting for transportation all such commodities as they

could obtain to transport, other than those for which special equipment was required; that, as they have been operating in the heart of the textile center of the Carolinas, a large part of their north bound traffic has consisted of textile products of various kinds, although they have transported northward asbestos products, rubber tires and various other commodities; that their south bound traffic has consisted of whatever they could pick up by their own efforts or through the solicitation of freight brokers with whom they did business; that among the articles transported by the Mauney Transfer Company prior to June 1, 1935, were cotton yarn, yarn tubing, warp beams, cones, skeins, cotton bed-spreads, petroleum products, canned goods, medicine, batteries, linoleum rugs, paper, brazil nuts, rayon, machinery, roofing, wire, nails, screen cloth, enamelware, electrical supplies, plumbing supplies, tires, asbestos products, cocoa, general hardware, chemicals, beer, paper containers, cotton fabric, spools, empty barrels, and boxes,
33 and cotton piece goods; and that the business done by plaintiff and its predecessor in the territory in which they have operated has been of a substantial character, both before and since June 1, 1935.

5. That plaintiff and its predecessor have never limited themselves in their holding out as common carriers to the specific commodities which they have received for transportation, but have solicited business as carriers of general package freight, other than the specialties requiring special equipment; and that the business carried on by them since June 1, 1935, has been of the same character as that carried on by them prior to that date.

6. That the Interstate Commerce Commission granted to plaintiff a certificate limiting the right to operate as a common carrier to the carrying of specific commodities shown to have been handled "with a degree of regularity both prior to and since June 1, 1935," and these only to the specific points served both prior to and since June 1, 1935, in the carrying of these commodities, its decision being reported in 24 M. C. C. 305 and by reference made a part of this paragraph.

7. That the effect of the limitation contained in the certificate granted plaintiff will be to forbid operation by plaintiff, as plaintiff cannot profitably operate as a common carrier if limited to the points and commodities embraced in the certificate as granted; and that in view of the holding out by plaintiff and its predecessor in interest and the substantial character of the business done by them as haulers of general package freight, the limitations contained in the order of the Commission constitute unreasonable limitations upon the right of plaintiff to do business under the "grandfather" clause of the statute.

34 *Conclusions of law*

And the Court sets forth the following as its conclusions of law:

1. That the limitation of the certificate granted plaintiff to commodities carried and points served prior to and since June 1, 1935, is not warranted by the statute and same constitutes error of law invalidating the order of the Commission.

2. That the finding of the Commission that the transportation service of plaintiff as a common carrier of commodities in the territory served prior to and since June 1, 1935, was limited to commodities carried and points served prior to and since said date, ignores the common law duty of a common carrier and the essential character of his holding out and is so arbitrary and unreasonable as to transcend the Commission's power.

3. That in limiting the certificate to specific commodities carried and points served on the theory that irregular common carriers should be so limited for the protection of common carriers operating on regular routes, the Commission proceeded upon an erroneous theory of law and transcended the powers vested in it by Congress.

4. That the order of the Commission should be set aside and the cause should be remanded to the Commission to the end that it may pass upon plaintiff's application for a certificate in the light of the principles set forth in the opinion herein.

Sgd. JOHN J. PARKER,
United States Circuit Judge, Fourth Circuit.
Sgd. ARMISTEAD M. DOBIE,
United States Circuit Judge, Fourth Circuit.
Sgd. E. Y. WEBB,
United States District Judge,
Western District of North Carolina.

35 In District Court of the United States for the Western District of North Carolina

CAROLINA FREIGHT CARRIERS CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

On Application to Set Aside an Order of the Interstate Commerce Commission

(Argued January 8, 1941. Decided)

Before PARKER and DOBIE, Circuit Judges, and WEBB, District Judge.

Wilmer A. Hill and R. G. Cherry for plaintiff; Frank Coleman, Special Assistant to the Attorney General, Theron L. Caudle, U. S. Attorney, Nelson Thomas, Attorney for Interstate Commerce Commission (Thurman Arnold, Assistant Attorney General, and Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, of counsel) for defendants; and Harry F. Gillis, Nuel D. Belnap and Robert N. Burchmore, for the Irregular Common Carriers Association of America, Amicus Curiae.

I concur.

(Sgd.) JOHN J. PARKER,
U. S. Circuit Judge.

I concur.

(Sgd.) A. M. DOBIE,
U. S. Circuit Judge.

I concur.

(Sgd.) E. Y. WEBB,
U. S. District Judge.

36 *Opinion*

PARKER, Circuit Judge:

This is a suit under 28 U. S. C. A. 41 (28) to enjoin and set aside an order of the Interstate Commerce Commission made upon an application for a certificate of public convenience and necessity under the "grandfather" clause of section 206 (a) of the Motor Carrier Act of 1935, 49 U. S. C. A. 306 (a). See 24 M. C. C. 305. Interlocutory injunction has been applied for and a special statutory court of three judges has been convened pursuant to section 47 of Title 28 of the United States Code. At the hearing upon the application for interlocutory injunction, the evidence heard before the Commission has been introduced and the case has been submitted for final decree.

Plaintiff with its predecessor Mauney Transfer Company, Inc., has been operating as a common carrier of freight by irregular routes since 1931. The evidence, which is uncontradicted, shows beyond question that it was holding itself out as a common carrier and accepting for transportation all such commodities as it could obtain, other than those for which special equipment was required. As it was operating in the heart of the textile center of the Carolinas, a large part of its north-bound traffic consisted of textile products of various kinds, although the evidence shows that it also obtained for transportation and transported northward asbestos products, rubber tires and various other commodities. Its south-bound traffic consisted of whatever it could pick up by its own efforts or through the solicitation of freight brokers with whom it did business. The Commission found "that prior to June 1,

1935, south-bound shipments consisted of a variety of commodities destined to a few points in Virginia and South Carolina and to points scattered throughout North Carolina." An examination of the record shows that among the articles transported prior to June 1, 1935, were cotton yarn, yarn tubing, warp, beams, cones, skeins, cotton bed-spreads, petroleum products, canned
37 goods, medicine, batteries, linoleum rugs, paper, brazil nuts, rayon, machinery, roofing, wire, nails, screen cloth, enamelware, electrical supplies, plumbing supplies, tires, asbestos products, cocoa, general hardware, chemicals, beer, paper containers, cotton fabric, spools, empty barrels and boxes, and cotton piece goods. The territory over which the operations of plaintiff were conducted was, roughly speaking, the territory lying along the Atlantic Seaboard between the Carolinas and New York and New England. On June 1, 1935, plaintiff or its predecessor in interest, was operating six or eight trucks within this territory.

By application filed January 24, 1936, the Mauney Transfer Company, predecessor of plaintiff, sought under the "grandfather" clause of section 206 (a) of the Motor Carrier Act a certificate of public convenience and necessity, authorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities (excepting commodities of unusual value, those in bulk, those requiring special equipment, etc.) between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, and Massachusetts, and those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghampton and south of Albany, over irregular routes, and between Cherryville and Boston, Mass., over a regular route through Henderson, N. C., Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y.

The Commission granted a certificate to plaintiff but limited it both as to points of operation and commodities, allowing operation only with respect to commodities shown to have been transported by plaintiff prior to June 1, 1935, and only between the points where the transportation of such commodities between the same points was shown subsequent to June 1, 1935. The basis of this decision of the Commission was set forth in its report as follows:

38 "We have frequently stated that authority to transport general commodities throughout a wide territory, over irregular and unspecified routes, pursuant to the 'grandfather' clauses of the act should be granted to a carrier only when such carrier's right thereto has been proved by substantial evidence. To do otherwise would create the very ills which regulation is

designed to alleviate, namely, congestion of highways, destructive rate practices, and unbridled competition. Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service. On the basis of all the evidence; it is clear that no substantial showing of service has been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the States included in the application.

"Applicant also contends that a carrier who has filed an application under the 'grandfather' clause of section 206 (a) of the act may not be restricted to the transportation of the commodities carried on June 1, 1935. Section 203 (a) (14) of the act contemplates that a common carrier may transport only a 'class or classes of property,' and we have found in numerous cases that the authority issued under the 'grandfather' clauses of sections 206 (a) and 209 (a) of the act should reflect any limitation in the undertaking of common or contract carriers as indicated by the service actually rendered on and since the statutory dates."

The finding and decision of the Commission upon which the limitation of the order, complained of by plaintiff, is based is as follows:

"We find that applicant's predecessor in interest was on June 1, 1935, and continuously since it and its predecessor have been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11, and points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J., (2) of asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middleton, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass., (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction, (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina, (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and

Greenville, S. C., (6) of canned goods from Baltimore, Md.,
39 to Shelby, N. C., (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes; that applicant is entitled to a certificate authorizing continuation of such operation; and that the application in all other respects should be denied."

Plaintiff says that the effect of thus limiting the order will be to put it out of business; and it is manifest that this must be true since it is hardly conceivable that a trucking company could do business if allowed to carry loads in only one direction, and the limitations imposed by the order will render it practically impossible for the trucks of plaintiff to obtain freight when returning south. It is the contention of plaintiff that the limitations are unreasonable and are not authorized by law; and certain it is that they amount to a reductio ad absurdum of the position taken by the Commission in this and a number of other cases to the effect that classification justifies limitation of "grandfather" certificates to specific commodities shown to have been transported between specific points. As pointed out in the brief of the Amicus Curiae:

"With northbound authorities so limited, applicant would be permitted to transport cotton yarn to many destinations and territories to which it would be denied the right to transport on the same trip asbestos textile products, and correspondingly would be permitted to handle asbestos textile products to Boston and Hudson, Mass., although on the same trip it would not be permitted to haul cotton yarn. Incidentally, in summarizing the proof, the Commission found as a fact as to cotton yarn that ten Massachusetts points were served prior to June 1, 1935, and as to asbestos textile products that services were required by the shipper to all points in a number of northern states.

* * * * *

"Considering only the southbound, plaintiff can go with petroleum products from Marcus Hook, Pa., to Columbia, S. C., but not with linoleum, and in contrast he can go with linoleum from Marcus Hook, Pa., to Spartanburg, S. C., but not with petroleum products. He can go with either of these commodities from two specified origins to any destination in North Carolina, but when it comes to canned goods, which he is authorized to carry from Baltimore, he must confine his deliveries to Shelby in that state, and when he goes with beer and ale from Newark, N. J., he must confine his deliveries to Gastonia and Wadesboro. Even
40 then, while he is authorized to originate beer and ale at New Jersey for delivery at the points just named, he is not permitted to handle that commodity if originated at Baltimore, although he is allowed to pick up canned goods at the latter point.

"The plaintiff is authorized to deliver cotton yarn at specified points in Maryland, New York, and Rhode Island, at all points in eastern Pennsylvania, and eight counties of northern New Jersey, but he is prohibited from obtaining any of the commodities which he is authorized to transport southbound unless he goes to Harrison or Perth Amboy, N. J., for supplies and materials; to Sewaren, N. J., or Marcus Hook, Pa., for petroleum; to Paulsboro, N. J., Marcus Hook, Pa., or East Walpole, Mass., for linoleum; to Baltimore for canned goods; to Newark, N. J., for beer and ale; or to York, Pa., for roofing and screen wire."

We think it perfectly clear that no such result was contemplated by Congress in the passage of the Transportation Act. On the contrary, the clear meaning of the language used in the act is that common carriers in business at the time of its passage and since should be allowed to continue in business as common carriers in the same territory without proof of public convenience and necessity. Sec. 206 (a) of the Act (49 U. S. C. A. 306 (a) provides:

"Except as otherwise provided in this section and in section 310a, no common carrier by motor vehicle subject to the provisions of this chapter shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: Provided, however, That, subject to section 310, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, * * *."

There is nothing in this language or in the reason and spirit of the Act which justifies the limiting of certificates granted common carriers under the grandfather clause to the precise commodities which they have theretofore hauled or in the case of carriers by irregular routes to the precise points that they have served
41 in the territory over which they have operated. It is well settled that "a common carrier is one who undertakes, for hire or reward, to transport the goods of such as choose to employ him from place to place." Dwight v. Brewster, 1 Pick. 50, 63;

Dobie on Bailments and Carriers, sec. 107; Hutchinson on Carriers, 3d ed. sec. 47. We agree, of course, that a mere holding out by a common carrier is not enough to bring him within the protection of the "grandfather" clause. The statute provides that he must have been in bona fide operation as a common carrier within the territory; and this bona fide operation means, we think, that he must have done such a substantial volume of business within the territory that he could reasonably be said to be operating therein as a common carrier. But there is nothing in the act which justifies the Commission in saying that because a common carrier who was operating as a general carrier of package freight did not haul rubber tires prior to 1935 he is not to be permitted to haul them in 1940, or that because he did not haul canned goods to Charlotte prior to 1935, although hauling them to Shelby in the same territory, he should not be permitted to haul them to Charlotte thereafter.

The Commission seeks to justify the limitation here imposed under the definition of common carrier contained in section 203 (14), 49 U. S. C. A., 303 (14), which provides:

"The term 'common carrier by motor vehicle' means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of chapter 1 of this title."

It is perfectly clear, however, that no authority for such limitation can be found in this definition. On the contrary, the effect of the language used is merely to make clear that "specialty
42 haulers," i. e., those who transport any special class or classes of property, are to be deemed common carriers, as well as those who transport property generally. And we think it significant that in making classifications of carriers for the proper performance of its duties, the Commission has not attempted to classify with respect to points served or specific commodities hauled, but has defined its seventeen classes of carriers on the basis of the general business engaged in. The classification is as follows: (1) carriers of general freight, (2) carriers of household goods, (3) carriers of heavy machinery, (4) carriers of liquid petroleum products, (5) carriers of refrigerated liquid products, (6) carriers of refrigerated solid products, (7) carriers engaged in dump trucking, (8) carriers of agricultural commodities, (9) carriers of motor vehicles, (10) carriers engaged in armored-truck service, (11) carriers of building materials, (12) carriers of films and

associated commodities, (13) carriers of forest products, (14) carriers of mine ores, not including coal, (15) carriers engaged in retail-store delivery service, (16) carriers of explosives or dangerous articles, (17) carriers of specific commodities, not subgrouped. Ex Parte No. MC 10, Classification of Motor Carriers of Property, 2 M. C. C. 703, 706. Under this classification, plaintiff should manifestly be classified as a carrier of general freight, since it was willing to haul any freight that it was offered, outside of the specialties requiring specialized equipment, and did substantial business of this character. Being a common carrier of general freight during the "grandfather" period, it became entitled to a certificate on the same basis; and we see nothing in any language of the act which justifies the Commission in limiting the certificate to the points served and the specific commodities transported. "Grandfather clauses are quite customary when the state first undertakes the regulation of an industry or profession; and so fas as we are advised the position taken by the Commission with
43 respect to these cases is quite without precedent. It is just as though a physician entitled to continue his practice under the grandfather clause of a statute regulating the practice of medicine should be told that he could practice only in the homes which he had formerly visited in his practice and would be allowed to treat only the diseases which he had formerly treated. We feel perfectly sure that if any such interpretation of the act had been suggested at the time of its consideration by Congress, it never would have been passed.

It is argued that the position of the Commission here has been approved by the Supreme Court in Loving v. United States, 310 U. S. 609, affirming 32 F. Supp. 464, and see 12 M. C. C. 571. We do not think so. The Loving case presented the situation of an applicant whose holding out over a large territory was not supported by any substantial transportation; and the cases cited by the Supreme Court in its per curiam opinion sustains no such radical limitation of the meaning of the statute as is here proposed by the Commission. McDonald v. Thompson, 305 U. S. 263, held merely that bona fide operation was a prerequisite to obtaining a certificate under the "grandfather" clause of 206 (a) of the statute and that operation in violation of a State statute was not such bona fide operation. United States v. Maher, 307 U. S. 148, held merely that certificate for route between fixed termini was not supported by proof of operation within the grandfather period of "anywhere for hire" service which was abandoned when the new route was instituted, and that the Commission finding on controverted matters of fact was binding. The other cases cited are pertinent merely with respect to the

point last mentioned. We do not think that the Loving decision can reasonably be construed as an approval by the Supreme Court of the position taken by the Commission here, viz., that notwithstanding that a common carrier may have done substantial business pursuant to his holding out as a carrier of general
44 package freight during the grandfather period, he is not to be granted a certificate for the territory served commensurate with his holding out and the business done pursuant thereto, but is to be limited just as though he had limited himself to the hauling of the special commodities received pursuant to his holding out and to the points to which these commodities happened to be hauled in the territory. The order of the Commission here under review not only so limits the certificate but further limits it to the points and commodities to which plaintiff's transportation extended both before and after the crucial date of June 1, 1935.

We have considered the case of Eastern Carrier Corp. v. United States, 31 F. Supp. 232, upon which counsel for the Commission rely; but that was a case involving transportation found to have been "more or less sporadic." The learned Senior Circuit Judge of the Third Circuit laid down in that case, however, the rule which we think applicable here, as follows: "If the plaintiff's predecessor was engaged in the bona fide transportation of merchandise generally at the grandfather date and this transportation was carried on by the plaintiff thereafter, a certificate of public convenience and necessity to continue that transportation should have been granted by the Commission."

It is argued that the interpretation placed by the Commission on the act has received the approval of Congress because in the Transportation Act of 1940 Congress did not legislate with regard thereto. It is to be noted, however, that section 203 (a) (14) of the Act of 1935, being the very section upon which the Commission relies for its interpretation, was amended so that a common carrier is now defined in terms of holding out. Quite apart from this, however, the interpretation placed upon the act has by no means been so uniform as to justify the conclusion that Congress could be deemed to have legislated with regard thereto. George Cassens Sons Common Carrier Application, 1 M. C. C. 771; Slagle Contract Carrier Application,
45 2 M. C. C. 127; Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, 744–745. And the rule is well settled that administrative practice or interpretation has no weight where, as here, the language of the statute is unambiguous and such practice or interpretation is unreasonable and clearly inconsistent with it. Helvering v. Safe Deposit & Trust Co., 4 Cir.

95 F. 2d 806, 811; Manhattan General Equipment Co. v. Commissioner, 297 U. S. 129, 134.

It is, of course, reasonable to limit the certificate to the type of service rendered by the carrier during the grandfather period, and to limit the territory to that within which substantial service of that type has been rendered; but it is unreasonable to limit the certificate of one who has functioned as a general carrier to the specific commodities carried and the specific points served. The law cannot reasonably be construed as authorizing such limitation. Nor can it be justified on the ground that it is based upon a finding of fact by the Commission. In the first place, a finding that the carrier here limited itself to the precise commodities transported and the precise points served is not supported by any evidence; and a finding that a general carrier of package freight should be held to be limited in his service to the precise commodities that he is able to obtain, when it is holding himself out as a general carrier, is so arbitrary and unreasonable as to transcend the Commission's power. Anchor Coal Co. v. United States 25 F. 2d 462, 471; Southern Pacific Co. v. I. C. C. 219 U. S. 433, 31 S. Ct. 288, 55 L. Ed. 283; I. C. C. v. Union Pacific Co. 222 U. S. 541, 32 S. Ct. 108, 56 L. Ed. 308; U. S. v. N. Y. C. R. R. 263 U. S. 603, 44 S. Ct. 212, 68 L. Ed. 470; U. S. v. New River Co. 265 U. S. 533, 540, 44 S. Ct. 610, 68 L. Ed. 1165. In the second place, nothing in the act warrants the limitation of the certificate of a general carrier upon such a finding.

There is another ground upon which the order of the Commission must be held invalid. The limitation which it
46 imposes with respect to irregular route carriers is not imposed with respect to carriers on regular routes and is admittedly imposed by it for the protection of regular route carriers. The Commission so states in the portion of its opinion quoted above, wherein the Commission said: "Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service." But Congress has made no such distinction between common carriers by regular and those by irregular routes; and, for the Commission to make such distinction is to add to the act of Congress in favor of one class of carriers and against another. This the Commission cannot do. Ann Arbor R. Co. v. United States 281 U. S. 658; Anchor Coal Co. v. United States 25 F. 2d 462.

For the reasons stated, the order of the Commission will be set aside (Rochester Tel. Corp. v. United States 307 U. S. 125), and

the cause will be remanded to the end that the Commission may pass upon the application of plaintiff in the light of the principles herein set forth. Federal Communications Com'n v. Pottsville Broadcasting Co. 309 U. S. 134. This does not mean that plaintiff is necessarily entitled to the certificate applied for, but that the Commission should pass upon the application in the light of the principles here laid down, and without the limitations which we have condemned, and grant to plaintiff a certificate covering the territory in which it finds that plaintiff carried on substantial operations as a common carrier during the grandfather period and has since carried on same.

Order set aside.

47 In District Court of the United States for the Western District of North Carolina

CAROLINA FREIGHT CARRIERS CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Decree

In this suit brought under 28 U. S. C. A. 41 (28) to enjoin and set aside an order of the Interstate Commerce Commission, an interlocutory injunction having been asked and a court of three judges having been convened pursuant to 28 U. S. C. A. 47, and the cause having been submitted upon the hearing for final decree, and the court having filed its findings of fact and conclusions of law which are by reference made a part hereof: Now, therefore, for the reasons set forth in the written opinion filed herewith,

It is ordered, adjudged and decreed that the order of the Interstate Commerce Commission filed July 10, 1940, in the proceeding wherein the plaintiff herein was an applicant for a certificate of public convenience and necessity and referred to in the decision of the Commission reported in 24 M. C. C. 305 be and the same is hereby set aside and annulled, and the cause is remanded to the Commission for further proceedings not inconsistent with the opinion of the Court filed herewith.

Sgd. JOHN J. PARKER,
United States Circuit Judge, Fourth Circuit.
Sgd. ARMISTEAD M. DOBIE,
United States Circuit Judge, Fourth Circuit.
Sgd. E. Y. WEBB,
United States District Judge,
Western District of North Carolina.

APRIL 5th, 1941.

48 In United States District Court

[Title omitted.]

Petition for appeal

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, feeling themselves aggrieved by the final decree entered therein by this Court on April 5, 1941, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered be duly authenticated and transmitted forthwith to the Supreme Court of the United States.

Dated May 29, 1941.

(S) THERON LAMAR CAUDLE,
United States Attorney.

49 THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel.
NELSON THOMAS,
Attorney,
For Interstate Commerce Commission.

Service of copy of the foregoing petition for appeal is hereby acknowledged this 10th day of June 1941.

(S) WILMER A. HILL,
Attorney for Carolina Freight Carriers Corp.

50 In United States District Court

[Title omitted.]

Assignment of errors

The United States of America and Interstate Commerce Commission object and except to the following actions of the Court in the above-styled case in connection with its final decree, opinion,

findings of fact and conclusions of law, and file the following assignment of errors with and as a part of their petition for appeal to the Supreme Court of the United States from the decree of the District Court entered April 5, 1941, in said cause:

The District Court committed error—

1. In entering the decree setting aside and annulling the order of the Interstate Commerce Commission.

2. In failing and refusing to dismiss plaintiff's complaint for lack of equity.

51 3. In weighing the evidence heard by the Commission and making a statement of fact in the Court's opinion and findings of fact, instead of limiting its consideration to the question of whether the Commission record contained substantial evidence to sustain the Commission's report and order.

4. In basing its findings of fact, conclusions of law, and decree upon the statement of substantive facts set out in the Court's opinion and finding rather than upon the substantive facts set out in the Commission's report, all of which substantive facts as found by the Commission were supported by substantial evidence.

5. In granting the prayer of plaintiff's complaint and issuing the decree upon the statement of facts made in the Court's opinion and findings of fact instead of denying the prayer of plaintiff's complaint and dismissing the same.

6. In failing to find that upon the facts stated in the Commission's report the Commission's order is valid and should be sustained.

7. In failing to find that upon the facts stated in the Court's opinion and findings of fact the Commission's order is valid and should be sustained.

8. In failing to find that the facts stated in the Commission's report were supported by substantial evidence in the Commission record and that the findings of the Commission were sufficient in law to support its order.

9. In concluding as stated in the first paragraph of the Court's "Conclusions of Law" "That the limitation of the certificate granted plaintiff to commodities carried and points served

52 prior to and since June 1, 1935, is not warranted by *by* the statute and same constitutes error of law invalidating the order of the Commission."

10. In concluding as stated in the second paragraph of the Court's "Conclusions of Law," "That the finding of the Commission that the transportation service of plaintiff as a common carrier of commodities in the territory served prior to and since June 1, 1935, was limited to commodities carried and points served prior to and since said date, ignores the common law duty of a common carrier and the essential character of his holding out and

is so arbitrary and unreasonable as to transcend the Commission's power."

11. In holding in paragraph 3 of the Court's "Conclusions of Law" that because the Commission in its report made reference to the duties of common carriers in regular route service and to the unfair and injurious competition of carriers in irregular route service, the Commission limited the certificate issued to plaintiff to the specific commodities carried and to the points served in order to protect common carriers operating on regular routes and that in so doing the Commission proceeded upon an erroneous theory of law.

12. In holding that in issuing "grandfather" certificates, the Commission is not justified in limiting the certificate to the points served and the specific commodities transported, but that such certificate should issue for any and all freight applicant was willing to carry if offered and to any point desired within the territory which the applicant was willing to serve.

(S) THEORN LAMAR CAUDLE,
United States Attorney.

53 THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel.
NELSON THOMAS,
Attorney,
For Interstate Commerce Commission.

Service of copy of the foregoing assignment of errors is hereby acknowledged this 10th day of June 1941.

(S) WILMER A. HILL,
Attorney for Carolina Freight Carriers Corp.

63 In United States District Court

[Title omitted.]

Order allowing appeal

On this day came the above-named defendants, by their attorneys, and presented their petition for appeal and their assignment of errors, together with a jurisdictional statement in accordance with the Revised Rules of the Supreme Court of the United States, which have been duly filed, and upon consideration thereof it is

Ordered and adjudged that an appeal to the Supreme Court of the United States from the final decree heretofore entered in the above-entitled cause on the 5th day of April, 1941, granting the prayer of the plaintiff's complaint to the extent and in the manner set out in said decree be, and it hereby is, allowed to said defendants; that a certified transcript of the record herein be transmitted in due course to the Supreme Court of the United States (except
64 that the Court directs that the transcript of the record before the Interstate Commerce Commission in No. MC 2253, Carolina Freight Carriers Corporation Common Carrier Application, introduced in evidence herein by plaintiff be transmitted physically to the Supreme Court instead of a copy thereof). Dated May 29, 1941.

(S) JOHN J. PARKER, *Judge.*

Service of a copy of the foregoing order allowing appeal is hereby acknowledged this 10th day of June 1941.

Original not signed. ——— ———,
Attorney for Carolina Freight Carriers Corp.

66 [Citation in usual form showing service on Wilmer A Hill, omitted in printing.]

71 In United States District Court

[Title omitted.]

Docket entries

11–27–40. Filing complaint and summons and forwarding copies to Attorney General and U. S. Attorney.

11–30–40. Filing temporary restraining order and bond of receiver.

12–20–40. Filing application and motion for restraining order.

1–8–41. Filing order, signed by Judge Webb, January 8–1941, and order signed by Judges John J. Parker, Armistead M. Dobie, and E. Y. Webb on January 8–1941, and answer of Interstate Commerce Commission.

1–10–41. Filing answer of defendant, United States and forwarding copy to plaintiff's attorney.

2–3–41. Filing record and statement showing shipments transported by Mauney Transfer Company and forwarding copies to Judges Parker, Dobie, and Webb.

2–6–41. Filing brief of plaintiff and defendants and forwarding copies to Judges Parker, Dobie, and Webb.

3–10–41. Filing reply brief on behalf of plaintiff and forwarding copies to Judges Parker, Dobie, and Webb.

3–20–41. Filing Findings of Fact and Conclusions of Law on behalf of Interstate Commerce Commission, and forwarding copies to attorney for plaintiff.

4–5–41. Filing decree and Findings of Fact and consent of three Judges.

5–31–41. Filing order allowing appeal signed by Judges Parker, Dobie, and Webb.

72 In United States District Court

[Title omitted.]

Praecipe for transcript of record

To the CLERK:

You will please prepare a transcript of the record in the above-entitled cause and certify and transmit the same to the Clerk of the Supreme Court of the United States pursuant to order heretofore made allowing appeal. You will include in said transcript copies of the following papers:

1. Bill of complaint, filed November 26, 1940, with Exhibit A thereto, being report and order of the Interstate Commerce Commission dated July 10, 1940, in proceeding No. MC 2253, Carolina Freight Carriers Corporation Common Carrier Application.

2. Order of Judge Webb of January 8, 1941, calling to his assistance Hon. John J. Parker and Hon. Armistead M. Dobie, United States Circuit Judges, to assist him in hearing plaintiff's application for interlocutory injunction.

73 3. Order of three-judge court of January 8, 1941, reciting stipulation of parties in open court that hearing on motion for interlocutory injunction should also constitute final hearing.

4. Answer of Interstate Commerce Commission, filed January 8, 1941.

5. Answer of United States, filed January 10, 1941.

6. Findings of Fact and Conclusions of Law requested by defendants United States and Interstate Commerce Commission, submitted March 20, 1941, not given by the three-judge court.

7. Opinion, findings of fact, conclusions of law and decree of three-judge court entered and handed down April 5, 1941.

8. Petition for appeal.

9. Assignment of errors.

10. Jurisdictional statement.

11. Statement directing attention to paragraph 3 of Rule 12 of the revised Rules of the Supreme Court of the United States.

12. Order allowing appeal.

13. Citation on appeal.

14. Notice to the Attorney General of the State of North Carolina.

15. Docket entries in proper order.

16. This praecipe for transcript of record.

17. The original exhibits filed by the plaintiff by agreement and by leave of court subsequent to the hearing in the above-styled cause on January 8, 1941, consisting of

(a) Transcript of stenographer's notes of hearing held October 28, 1938, at Charlotte, N. C., in Interstate
74 Commerce Commission proceedings in its Docket No. MC 2253, Carolina Freight Carriers Corporation Common Carrier Application, covered by certificate of the Secretary of the Commission under date of January 21, 1941.

(b) Photostatic copies of Exhibits Nos. 1 to 4 filed at said Commission hearing, covered by certificate of the Commission's Secretary under date of January 23, 1941.

18. Clerk's certificate.

THERON LAMAR CAUDLE,
United States Attorney.
THURMAN ARNOLD,
Assistant Attorney General.
FRANK COLEMAN,
Special Assistant to the Attorney General.
For the Defendant United States.
DANIEL W. KNOWLTON,
Chief Counsel.
NELSON THOMAS,
Attorney,
For Defendant Interstate Commerce Commission.

Service of copy of the above praecipe is hereby acknowledged this 10th day of June 1941.

/S/ WILMER A. HILL,
Attorney for Carolina Freight Carriers Corporation.

77 Before the Interstate Commerce Commission

No. MC-2253

In the matter of the application of Carolina Freight Carriers Corporation (successor in interest to Mauney Transfer Company, Inc.), of Cherryville, N. C., for a certificate of public convenience and necessity or permit (Form HMC 1), authorizing operation as a common carrier or contract carrier of commodities generally, in interstate commerce between points located in the states of South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, Delaware, New York, New Jersey, Connecticut, Rhode Island,

Massachusetts, and the District of Columbia, over irregular routes between these points and over a regular route between Cherryville, N. C., and Boston, Mass., via Henderson, N. C., Baltimore, Md., Wilmington, Del., and Philadelphia, Pennsylvania.

Statement of evidence

U. S. COURT ROOMS,
Charlotte, N. C., October 28, 1938.

Met pursuant to notice at 10 o'clock a. m.

* * * * * *

Before Hon. W. W. McCASLIN, Bureau of Motor Carriers, Interstate Commerce Commission, 240 Post Office Building, Charlotte, N. C.

THE EXAMINER.

Appearances

THAXTON RICHARDSON, Greensboro, North Carolina, appearing for the applicant.

78–79 H. P. TOXEY, in care of S. A. L. Ry. Co., Norfolk, Virginia, appearing for the Protestant Rail Carriers in Southern and Official Classification Territories.

J. D. LAWSON, Charlotte, North Carolina, appearing for Horton Motor Lines, and E. T. and W. N. C. Motor Transportation Company.

R. ST. AMAND, Columbia, South Carolina, appearing for New South Express Lines, Inc., Columbia, South Carolina, protestants.

80 PROCEEDINGS

THE EXAMINER. The Interstate Commerce Commission has set for hearing at this time and place before the Examiner docket No. MC2253, application of Carolina Freight Carriers Corporation, Cherryville, North Carolina, as successor in interest to Mauney Transfer Company, Inc., for a certificate or permit authorizing operations as a common or contract carrier by motor vehicle in the transportation of commodities generally, in interstate commerce between points located in the states of South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and the District of Columbia, over irregular routes and over a regular route between Cherryville, North Carolina, and Boston, Massachusetts, via Henderson, North Carolina; Baltimore, Maryland; Wilmington, Delaware, and Philadelphia, Pennsylvania.

The territory and routes are set forth specifically in the application. Every one present has heard the announcement made in the last case in regard to the requirements for admission to practice, I believe, in regard to smoking and distribution of copies of transcript of testimony.

Who appears for the applicant?

Mr. RICHARDSON. Thaxton Richardson, appears for the applicant. I am registered practitioner before the Commission.

The EXAMINER. Are there any protestants or intervenors
81 for this application?

Mr. ST. AMAND. R. St. Amand, employee of the New South Express Lines, Columbia, South Carolina. This application covers a large part of the territory now served by us, and we enter protest.

The EXAMINER. Your appearance will be permitted on those grounds.

Mr. TOXEY. H. P. Toxey, Norfolk, Virginia, for Southern Rail Carriers in Southern and Official Classification Territories, therefore, competitive with this application; therefore, we protest the application. I am a registered practitioner.

The EXAMINER. I have received a letter this morning from J. D. Lawson, assistant to the president of the Horton Motor Lines. He is necessarily absent on account of other engagements. He desires a petition of intervention in opposition be entered and that his appearance be entered. I understand the appearance blank will be filled out for Mr. Lawson by someone with whom he made arrangements. The intervention and appearance will be permitted on the statements contained therein.

The case of Ratliff and Ratliff appears first on my calendar. I believe it will be somewhat shorter than the Carolina Freight Carriers Corporation case, so this case, Carolina Freight Carriers
Corporation, is recessed until the completion of the hearing
82 on the other application, which, I believe, will be over about 11:30.

That will be my outside estimate, so witnesses who desire to attend to something else, it is safe, I believe, for them to go about their business until 11:30, but not later than that, because we may complete this case in a shorter time than that.

You are excused.

(Whereupon at 10:15 a m., an adjournment was taken.)

83 AFTERNOON SESSION

U. S. COURT ROOMS,
Charlotte, N. C., October 28, 1938, 2 o'clock p. m.

The EXAMINER. We will come to order.

As was announced this morning at 10 o'clock, the Examiner is now ready to proceed with No. MC–2253, Carolina Freight Carriers Corporation. Are you ready to proceed, Mr. Richardson?

Mr. RICHARDSON. Yes, sir.

Mr. TOXEY. I would like to enter the appearance of Mr. J. D. Lawson on behalf of the E. T. & W. N. C. Transportation Company of Johnson City, Tennessee. They operate in the same territory and are competitive with the applicant and, therefore, are protesting the application.

The EXAMINER. Mr. Lawson is licensed practitioner, I believe?

Mr. TOXEY. Yes, sir.

The EXAMINER. His appearance and protest will be permitted.

I don't want to show you how to run your case, but Mr. Nicholson spoke to me yesterday or sometime in regard to the necessity for his getting back to Raleigh. He is a State employee. We regret very much to subpena a State employee. In view of his circumstances, I am willing to put his testimony on out of order, if it is convenient to you.

84 Mr. RICHARDSON. I will be glad to accommodate Mr. Nicholson under those circumstances. I appreciate the Examiner permitting me to do so.

I will now call Mr. Nicholson to the stand for his testimony.

H. M. NICHOLSON was sworn and testified as follows:

Direct Examination by Mr. RICHARDSON:

Q. Your name is H. M. Nicholson?

A. Yes.

Q. Raleigh, North Carolina?

A. Yes.

Q. You are employed by the Utilities Commission of North Carolina?

A. Yes.

Q. You were traffic manager for McClarin Tire Company in Charlotte, North Carolina?

A. That is right.

Q. During what period of time?

A. From 1923 up through September 1935.

Q. During the period of time that you were traffic manager for McClarin Tire Company, and prior to June 1, 1935, did you have occasion to use the services of Mauney Transfer Company in the transportation of your company's property?

A. Yes.

Q. Were you traffic manager for that company?

85 A. Yes.

Q. And you had knowledge of the transportation requirements of that company?

A. Yes.

Q. Do you recall, Mr. Nicholson, what commodities Mauney Transfer Company transported for your company prior to June 1, 1935?

A. Pneumatic tires and tubes and stearic acid.

Q. Did those tires and tubes originate in your Charlotte plant?

A. They did.

Q. Where did he transport them to?

A. To New York City, Boston, Massachusetts, and Plainfield, New Jersey.

Q. Where did the stearic acid originate, if you recall?

A. That originated at Philadelphia.

Q. It moved to what point?

A. Charlotte.

Q. Do you recall any other commodities that Mauney Transfer Company transported for your company?

A. That is all that I can recall.

Q. Those shipments moved prior to June 1, 1935?

A. That is correct.

Q. Did you continue to use the services of Mauney Transfer Company subsequent to June 1, 1935, as business conditions

86 required?

A. We used them on several occasions.

Q. Did you leave the McClarin Rubber Company during the year of 1935?

A. I did.

Q. Did they close their plant here along about that time?

A. That is right.

Q. In the transportation of your products outbound from Charlotte, did you expect Mauney Transfer Company to transport those commodities to the points to which you designated along the eastern seaboard States?

A. I did; yes.

Q. Did you expect them to pick up shipments at points in those eastern seaboard States and bring back to you in Charlotte from any point you had shipments coming from upon your instructions?

A. Yes.

Mr. RICHARDSON. That is all.

Cross-examination by the EXAMINER:

Q. Did you ever ask them to haul tires to any other places?

A. I don't believe I did.

Q. Did you ever ask them to pick up any shipments coming back except stearic acid?

A. I don't recall that we did.

87 Q. What led you to expect him to do anything else?

A. I didn't intend to leave the impression that we expected him to do anything else other than what we instructed him to do.

Q. The tire plant closed about the time you left them in September 1935?

A. That is true.

Q. Do you know of the shipments for New England points, I believe, Boston was the only one you named—do you know whether they were hauled from origin to destination?

A. They were.

Q. Without interchange?

A. Yes.

Q. Did you ever make any inquiry of the Mauney Transfer Company as to whether they would take the shipments to other places?

A. I never made any definite inquiry; no.

Q. If you had a shipment to go to a particular place, you just called them and told them to come and get it, or did they solicit it?

A. They solicited.

Q. They came by asking to transport, and you gave them such as you had for them to transport?

A. That is correct.

(Witness excused.)

88 C. GRIER BEAM was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. What is your name?

A. C. Grier Beam.

Q. You are president of Carolina Freight Carriers Corporation, is that correct?

A. Yes, sir.

Q. How long have you been connected with Carolina Freight Carriers Corporation?

A. Well, I have been connected with Carolina Freight Carriers ever since they were organized under the name of Carolina Freight Carriers.

Q. About when did that take place?

A. In March 1937.

Q. March of 1937?

A. Yes.

Q. Prior to the creation of the Carolina Freight Carriers Corporation, did you buy the operating rights of Mauney Transfer Company, Inc., or Mauney Transfer, Inc.?

A. Cohn Beam and myself did.

Q. At that time the Mauney Transfer was a going business?

A. Yes, sir.

Q. Engaged in the transportation of freight or property by motor vehicle?

89 A. Yes, sir.

Q. Since the time that you bought the interest in the Mauney Transfer Company, have you continued to transport property by motor vehicle?

A. Yes, sir.

Q. Can you tell us, Mr. Beam, how many motor vehicles you had in operation at the time you purchased the operating rights of Mauney Transfer?

A. Well, they had about three that was in shape to operate, or four—three or four.

Q. At the time you purchased them?

A. Yes.

Q. Have you added to that number since that time to take care of the business which your company has been transporting?

A. Yes, sir.

Q. How many do you have in operation today?

A. Seventeen.

Q. Seventeen units?

A. Yes.

Q. Those units——

Mr. Foxey. Seven or seventeen?

The Witness. Seventeen.

By Mr. Richardson:

Q. Those units have been added as a result of the increase of the business of that company?

A. Yes, sir.

90 Q. Since you acquired the rights of Mauney Transfer Company, have you had charge of the operation of that business?

A. Yes, sir.

Q. And you are familiar with the operations that have been conducted by that company or by its successor in interest since you acquired the operating rights?

A. Yes, sir.

Q. Since you acquired the operating rights of Mauney Transfer Company, Inc., have you operated your vehicles over specified routes?

A. No, sir.

Q. Have you operated them over the routes best suited for the cargo which was loaded on the particular vehicle?

A. Yes.

Q. Mr. Beam, is your principal place of business located at Cherryville, North Carolina?

A. Yes, sir.

Q. Do you have any other offices or places of business at this time?

A. I have an office in New York.

Q. Do you have any representative at any place other than New York and Cherryville—stations located there?

A. No; I guess not.

Q. You wouldn't call any of those——

A. No, sir.

91 Q. Have you confined your business to the transportation of truck load or less than truck load business since you have been operating?

A. We have been taking anything—truck loads and less than truck loads.

Q. Have you held yourself out to the public generally for the transportation of property since you have been operating the company?

A. Yes, sir.

Q. You operated your trucks at a scheduled time, Mr. Beam?

A. No, sir.

Q. Have you, or do you think that you could operate your trucks economically when they are only partially loaded, to the cargo capacity of the truck?

A. I have operated them with part loads.

Q. Do you find it an economical situation?

A. No, sir.

Q. Could you make money by operating them partly loaded?

A. No, sir.

Q. Could you operate them or make money out of your operation if you had traffic in only one direction?

A. No, sir.

Q. During the time you have been operating your motor carrier business, have you had trucks that were loaded out with property which was to be delivered from the one truck at

92 two or more destinations?

A. Sure.

Q. Will you give us an idea about hay many destinations you have had represented on one truck of freight, if you can recall, since you have been operating the business?

A. Well, I imagine it would run as high as fifteen different shipments.

Q. On one truck?

A. Yes.

Q. Did you and have you made it a practice to distribute those less than truck load shipments to destinations to which they were consigned?

A. Yes, sir.

Q. Does that statement apply to both northbound and southbound movements with regard to your business?

A. I don't know that I recall that I had that many stops on southbound freight, but I would say at least ten.

Q. You have had a number of places represented—two or more?

A. Yes.

Q. Have you delivered the freight to the various points to which it was consigned by the shipper?

A. Yes, sir.

Q. Since you have been operating the business, have you had freight loaded out to be delivered to intermediate points as your truck went along toward the final destination it
93 was loaded on?

A. Yes, sir.

Q. Did you stop and put the freight off at those intermediate points?

A. Yes, sir.

Q. Mr. Beam, I hand you a document and ask you if that is a document which was prepared by you, or which you prepared from records which you obtained from your predecessor in interest?

A. Yes, sir.

Q. Are these the records from which that statement is prepared?

A. Yes, sir.

Q. Is that statement true and correct to the best of your knowledge and belief?

A. Yes, sir.

Mr. TOXEY. Mr. Examiner, before we go any further, I would like to inquire if Mr. Beam was connected with the Mauney Transfer Company at all in any capacity.

By Mr. RICHARDSON:

Q. Were you ever connected, prior to your buying into the Mauney Transfer Company, were you connected with the Mauney Transfer Company?

A. Yes, sir.

Q. In what capacity?

A. At the time it was first bought out, Cohn Beam and
94 myself bought it. We operated it together.

Q. At what time did you and Mr. Cohn Beam buy an interest in the Mauney Transfer Company, approximately, what time?

A. November of 1936.

Q. Prior to November 1936, did you have any connection with Mauney Transfer Company?

A. A little.

Q. You were not employed by Mauney Transfer Company?

A. No, sir. I operated a trucking company of my own.

Q. These records were turned over to you by your predecessor in interest?

A. Yes, sir.

Mr. TOXEY. Mr. Examiner, I object to this witness testifying about shipments of which he has no personal knowledge whatsoever.

Mr. RICHARDSON. This witness only said he prepared the statements from the records he received from his predecessors.

The EXAMINER. The genuine'ss of the records have to be shown by another witness.

Mr. RICHARDSON. We think we can do that by another witness. We were only presenting to the Examiner and the Commission statements which have been prepared from records which are here.

The EXAMINER. All the testimony in regard to the records and naturally the exhibit prepared from it will have to be
95 stricken if it is not established that it comes from genuine records.

Mr. RICHARDSON. Yes; we recognize that fact.

By Mr. RICHARDSON.

Q. Insofar as you know, Mr. Beam, these are the genuine records of shipments which were transported by your predecessor in interest?

A. Yes. I went to some of the shippers myself and got the records.

Q. Some of the records which are represented here?

A. Yes.

Q. You went to the shippers and asked for information relative to shipments by Mauney Transfer Company prior to June 1, 1935?

A. Yes.

Q. They gave you certain records?

A. Yes.

Q. Those records, some of which are in this batch?

A. Yes.

The EXAMINER. We will mark the exhibit just referred to as exhibit No. 1. Ruling on its admissibility will be deferred until time has been given to the protestants for cross-examination.

(Exhibit No. 1, Witness Beam, was marked for identification.)

By Mr. RICHARDSON:

Q. I ask you, Mr. Beam, if this document I hand you was
96 among the records which were turned over to you representing a registration of Mauney Transfer Company under the Code of Fair Competition for the trucking industry?

A. Yes, sir.

The EXAMINER. Is there any objection to this?

Mr. TOXEY. This witness testified he doesn't know anything about the operation of this concern in 1934; therefore, he has no personal knowledge whatsoever of this being an authentic copy. His name appears nowhere on that.

By Mr. RICHARDSON:

Q. Mr. Beam, I ask you whose name is signed to the document which you have before you as on behalf of Mauney Transfer Company?

A. Ed Sullivan, Jr.

Q. Is Mr. Sullivan employed by you at the present time?

A. Yes, sir.

Mr. TOXEY. Let's have Mr. Sullivan testify as to the correctness of this rather than Mr. Beam.

Mr. RICHARDSON. We will accommodate opposing counsel by having Mr. Sullivan on the stand.

The EXAMINER. This will be marked as exhibit No. 2. Ruling on its admissibility will be deferred.

(Exhibit No. 2, Witness Beam, was marked for identification.)

By Mr. RICHARDSON:

Q. That was turned over to you as a document belonging to the predecessor in interest?

A. Yes.

97 Mr. TOXEY. Is this witness not going to undertake to identify any of these shipments whatsoever?

Mr. RICHARDSON. He is only stating that those records were turned over to him by his predecessor in interest.

The EXAMINER. Mr. Beam, a compliance order was issued in this case, wasn't it, and you petitioned to have it set aside and the case re-opened?

The WITNESS. Yes, sir.

The EXAMINER. Do you have a separate application pending before the Commission in your own name?

The WITNESS. No, sir.

The EXAMINER. You have dismissed that case?

The WITNESS. Yes, sir.

Mr. RICHARDSON. If the Examiner, please, I have some knowledge of that situation.

The EXAMINER. Off the record.

(Discussion off the record.)

Mr. RICHARDSON. I started to make a statement by this applicant. He did have an application under the name of Beam Trucking Company. I was with him when that application was withdrawn.

The EXAMINER. I wanted to know whether this was a consolidation of the two applications or based entirely on the Mauney Transfer Application.

Mr. RICHARDSON. This is based entirely on the Mauney
98 Transfer application and the other was withdrawn.

The EXAMINER. When did this transfer take place?

The WITNESS. November 1936.

The EXAMINER. That was when you and Cohn Beam bought this?

The WITNESS. Yes.

The EXAMINER. Did you have A-26 filed then, do you know?

The WITNESS. Yes, sir.

The EXAMINER. I believe though as far as the Commission's records are concerned, you and Cohn Beam operated the corporation Mauney Transfer Company. You bought the stock rather than the rights?

The WITNESS. Yes, sir.

The EXAMINER. You operated under that name until March 8, 1937?

The WITNESS. That is right.

The EXAMINER. When the Commission approved the transfer of the rights from the Mauney Transfer Company to Carolina Freight Carriers Corporation, is that right?

The WITNESS. Yes, sir.

The EXAMINER. That is the only transfer formally that has been made?

The WITNESS. Yes.

The EXAMINER. Mr. Beam, did you appear before Mr. H. B. Raymond on January 5, 1938, and certify that a statement then made in writing was true and correct?

99 The WITNESS. Yes, sir.

The EXAMINER. Here is the statement. Is this your signature?

The WITNESS. Yes, sir.

The EXAMINER. That is it?

The WITNESS. Yes, sir.

The EXAMINER. Do you know Mr. Butler's signature? Is there anybody here that does?

The WITNESS. Yes; I do.

The EXAMINER. Will you look at that signature and see if that is the genuine signature of Mr. Butler's?

The WITNESS. Yes; that is his signature.

The EXAMINER. It is on the original application?

The WITNESS. Yes.

The EXAMINER. The original application and the interview statement just referred to, which was signed on January 5, 1938, will be considered in evidence.

Mr. RICHARDSON. The application and the interview——

The EXAMINER. And the interview statement. None of the attached statements on which the signatures of the persons signing the same have not been identified will, of course, be considered.

That statement at the time you made it was true and correct to the best of your knowledge and belief?

The WITNESS. Yes, sir.

100 The EXAMINER. That is all I have.

Is he the operating man for safety questions?

Mr. RICHARDSON. At the present time, I would say, yes.

The EXAMINER. Are you familiar with the Motor Carrier Safety Regulations?

The WITNESS. Yes. I think I am familiar with most of those.

The EXAMINER. Have your agents and employees been instructed with regard to these Regulations?

The WITNESS. Yes, sir.

The EXAMINER. How did you go about it?

The WITNESS. I would say W. H. Lynn. He was with me up until several months ago. He had charge of the drivers, and he took them up with the drivers himself. I didn't have anything to do with it.

The EXAMINER. Do you know whether their attention was called to those regulations?

The WITNESS. Yes, sir.

The EXAMINER. They were caused to familiarize themselves with them?

The WITNESS. Yes.

The EXAMINER. Did you file with the Commission the form regarding the drivers required by the order of June 5, 1937; some cards, I believe, questionnaire cards were sent out about drivers?

101 The WITNESS. He was supposed to have done it, but I am not positive whether he did or not.

The EXAMINER. Have your drivers been instructed in regard to the rules for driving of motor vehicles under part 2 of the Regulations?

The WITNESS. Yes, sir.

The EXAMINER. Are your vehicles now equipped in accordance with the requirement for parts and accessories necessary for safe operation, part 3 of the Regulations?

The WITNESS. Yes, sir.

The EXAMINER. Have you had any accidents in your operation since April 1, 1937, resulting in death of any person, personal injury requiring medical attention or property damage to the apparent extent of $100 or more?

The WITNESS. Well, I would say there was one where there was a patient taken to the hospital. There didn't seem to be anything wrong.

The EXAMINER. Some personal injury?

The WITNESS. Yes, sir.

The EXAMINER. You understand under part 4 of the Regulations that any such accident must be reported to the Interstate Commerce Commission?

The WITNESS. Yes.

Mr. TOXEY. I would like to ask him a question, please.

The EXAMINER. All right.

102 Cross-examination by Mr. TOXEY:

Q. Have you ever obtained from the state of South Carolina a certificate or authority to operate in the state of South Carolina?

A. I have never been told I couldn't operate down there. I have never hesitated to operate down there.

Q. Have you obtained the necessary certificate from the South Carolina Commission to operate?

A. I buy license plates in South Carolina. I don't know just what you are talking about.

The EXAMINER. From the Public Service Commission.

The WITNESS. I don't know, I will be frank with you, whether I have or not.

By Mr. TOXEY:

Q. You don't know?

A. No.

Q. You are the operating head of the business?

A. Yes.

Q. Yet you can't tell whether you have ever obtained it or not?

A. No.

The EXAMINER. What kind of License have you got?

The WITNESS. South Carolina license.

The EXAMINER. What letters have you got on them?

The WITNESS. I can't tell you. I don't know.

By Mr. TOXEY:

103 Q. How many trucks carry South Carolina licenses?

A. Four.

Q. Insofar as you know, you have no certificate from the South Carolina Commission authorizing you to operate interstate in that state?

A. I don't know.

Q. About your predecessor in interest, did they have a certificate from the South Carolina Commission that you know of?

A. I can't tell you whether they did or not.

The EXAMINER. Did they transfer any to you?

The WITNESS. No, sir.

Mr. TOXEY. That is all.

The EXAMINER. What kind of North Carolina licenses do you have?

The WITNESS. We have got the contract licenses.

The EXAMINER. What letter is that?

The WITNESS. "S."

The EXAMINER. Do you have an interstate carrier license in North Carolina, the new kind that has been issued in the last year?

The WITNESS. "I-S" Tags?

The EXAMINER. Do you have "I-S"?

The WITNESS. No, sir. I didn't know what to buy last year, and I asked Mrs. Nevin. She said she thought I should buy the

104 contract license and I did. I have learned since that I should have bought the other, but they wouldn't transfer them. I asked them to.

The EXAMINER. Is there anything further?

By Mr. TOXEY:

Q. Did you ever obtain any authority from any other states to operate in those states—the state of Virginia, for instance?

A. Did I ever obtain any authority from Virginia?

Q. From the Virginia Corporation Commission?

A No, sir. I am paying 2 percent road tax to Virginia to operate through there.

Q. Mileage tax?

A. Yes. I didn't know I had to have anything to operate through there. I have never heard of it. I have never been stopped up there for anything.

Q. Have you ever been stopped in South Carolina?

A. Nothing more than for license plates.

Mr. TOXEY. That is all.

Redirect examination by Mr. RICHARDSON:

Q. Mr. Beam, when you began under the new name of Carolina Freight Carriers Corporation, you transferred the rights and operating equipment of Mauney Transfer over the the new corporation, is that correct?

A. Yes, sir.

Q. Is it your understanding that you have a reciprocal arrangement whereby you are permitted to operate out of North
105 Carolina into and from other states under the North Carolina license plate that you buy?

A. Yes, sir.

Q. Have you at all times operated your business under that understanding, and in good faith as far as the law is concerned?

A. Yes, sir.

Mr. RICHARDSON. That is all.

Recross-examination by Mr. TOXEY:

Q. Have you made an effort to determine whether or not you could operate under reciprocal arrangement or not?

A. I talked to the State Department about it.

Q. Which State Department?

A. Raleigh, Mc Laughlin.

Q. North Carolina State Highway Department?

A. He said I was supposed to operate in Virginia without paying 2 per cent, that there wasn't anything that I could do about it.

Q. Did he tell you that you were supposed to operate in the state of South Carolina without paying anything?

A. I didn't ask him about the state of South Carolina.

Q. You didn't make any inquiry about what authority you had to have to operate in the state of South Carolina?

A. I didn't have to. I sent a truck down there and had to
106 put license plates on it. I didn't think I had to ask him anything about that.

Mr. RICHARDSON. You didn't think there was anything else?

The WITNESS. I sent the truck down there, and they asked that I buy license plates.

Mr. RICHARDSON. And you did it?

The WITNESS. Yes.

Mr. RICHARDSON. That is all I have.

Mr. TOXEY. That is all.

The EXAMINER. You are excused.

(Witness excused.)

ED SULLIVAN, Jr., was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. Your name is Ed Sullivan, Jr.?

A. Yes.

Q. You live at Cherryville, North Carolina?

A. Yes.

Q. You are employed by the Carolina Freight Carriers?

A. Yes.

Q. Were you ever connected with Mauney Transfer Company?

A. Yes.

Q. During what period of time were you connected with Mauney Transfer Company?

A. During the first part of 1933, and from February
107 until August, and in 1934 from March until September.

Q. During the period of 1933, Mr. Sullivan, what were your duties with the Mauney Transfer Company?

A. Truck driver.

Q. As truck driver for the Mauney Transfer Company, do you recall any property that you transported in the trucks you were driving for the people for whom Mauney transported freight?

A. Yes, sir.

Q. Will you tell us something about what the commodities were and where you transported them to and from?

A. We transported textile machinery to and from North Carolina and South Carolina.

The EXAMINER. What points?

I don't want any general testimony. It is a waste of time when you do that. All witnesses understand that no weight will be given in saying you transported from North Carolina to South Carolina. When you name a shipment you are testifying from memory, you have got to state what point in North Carolina and what point in South Carolina, and what it was that you hauled.

I don't intend to let any of this general testimony in the record. It just clutters it up and costs money.

By Mr. RICHARDSON:

Q. Tell us with respect to the textile machinery, beginning with the textile machinery, what points in Virginia did you
108 haul it from and to what points in North Carolina or South Carolina you hauled it to.

A. Out of Alta Vista, Virginia, we hauled textile machinery; that is, speeders to Lincolnton, North Carolina, and from Alta Vista, Virginia, to Southside, North Carolina, and from Alta Vista to Long Shoals, North Carolina, and out of Salisbury, North Carolina, we moved looms to Rock Hill, South Carolina.

Q. That was from Salisbury, North Carolina, did you say?

A. Yes, to Rock Hill, South Carolina. From Charlotte, North Carolina, to Chester, South Carolina, and from Asheville, North Carolina, to Salisbury.

Q. You need not name any shipment you moved between points in North Carolina.

A. From Salisbury to Spartanburg, South Carolina.

Q. Do you recall any other machinery between points in Virginia and South Carolina and between North Carolina and South Carolina points, where they originated or were destined?

A. I think that is all I can name now.

Q. With respect to other commodities, Mr. Sullivan, tell us what you hauled, where it originated, and where you hauled it to, if you recall?

A. From Gastonia, North Carolina, to Chester, Pennsylvania, and New York City, we hauled cotton yarn.

Q. That was from Gastonia, North Carolina, did you say, too?

A. To Chester, Pennsylvania, and New York City.

Q. Tell us any other points.

109 A. From Cherryville, North Carolina, we hauled cotton yarn to Chester, Pennsylvania; New York City; Bound Brook, New Jersey; Montclair, New Jersey; Jersey City, New Jersey; Passaic, New Jersey; and Boston, Massachusetts; Providence, Rhode Island; and Pawtucket, Rhode Island.

Q. Do you recall any other points that you hauled textiles or yarns from?

A. Out of Clover, South Carolina, we hauled cotton yarn to Chester, Pennsylvania; and Clifton Heights, Pennsylvania; and out of McColl, South Carolina, we hauled cotton fabric to Conshohocken, Pennsylvania.

Q. Do you recall any other points that you hauled textiles from or to?

A. There were some more, I am sure, but I don't know any more offhand.

Q. Do you recall any more North Carolina points that you hauled cotton yarn or anything from?

A. Out of Lincolnton, North Carolina, I hauled cotton yarn to Chester, Pennsylvania, to New York City, and to Pawtucket and Providence, Rhode Island; to Boston, Massachusetts; and——

Q. Just go ahead and name all the North Carolina points or South Carolina points that you handled it from, if you can recall.

110 A. From Taylorsville, North Carolina, we hauled cotton yarn to Philadelphia, Pennsylvania; Chester and Wilmington, Delaware; and Hagerstown, Maryland.

I think that is all.

Do you want me to name anything else we hauled?

Q. Yes. I want you to name any other commodities; if that is all in connection with the yarn, I want you to go to the other commodities that you recall transporting.

A. We hauled McLarin tires out of Charlotte, North Carolina, to Boston, Massachusetts, to Laurens, Massachusetts, to New York City.

Q. Is that all you recall about the tires?

A. That is all I recall.

We hauled empty wire boxes—empty boxes containing wire spools to Harrison, New Jersey, from Charlotte, North Carolina.

Q. Boxes containing empty spools?

A. That is right.

The EXAMINER. Those are spools used in the manufacture of cotton?

The WITNESS. No, sir. Spools brass wire used in the making of asbestos comes on.

By Mr. RICHARDSON:

Q. You hauled empty spools to Harrison, New Jersey, I believe you said?

A. Yes.

Q. Do you recall any other places you transported spools to, if any?

111 A. No, sir; I think that is all.

Q. What other commodities, if you recall, did you haul to and between what points did you transport them?

A. I think that is about all that I have ever hauled north.

Q. Tell us about the south-bound commodities that you hauled, Mr. Sullivan, if any.

A. Out of Chester, Pennsylvania, we hauled empty warp rolls to Thomasville, High Point, Lexington, Belmont, and Gastonia, Cherryville, Lincolnton, North Carolina; and Clover, South Carolina; and out of Chester, Pennsylvania, we hauled petroleum products.

Q. Out of what point?

A. Marcus Hook, Pennsylvania.

Q. You hauled petroleum products?

A. That is right. To Greensboro, Winston-Salem, and Charlotte, North Carolina.

The EXAMINER. That was packed oil and greases?

The WITNESS. That was in drums. There were no packages at that time, no canned oil.

The EXAMINER. This stuff was in containers that you hauled?

The WITNESS. Yes, fifty-gallon drums.

By Mr. RICHARDSON:

Q. Were there any commodities there except the oil that you transported along at that time?

A. There were some greases in pails and tubes, you might say.

Q. All of these petroleum products were packed in packages so it could be carried on the type of equipment you had?

112 A. That is right.

Q. You didn't haul any with tank trucks?

A. No, sir.

Q. What else did you haul?

A. Out of Philadelphia, we hauled empty containers to Gastonia, and out of Harrison, New Jersey, we hauled brass wire to Charlotte.

Q. Out of Philadelphia, you hauled contajners, did you say?

A. Containers.

Q. To what points?

A. Gastonia, to several—a half dozen different mills in Gastonia.

Q. Are there any other commodities that you recall?

A. We hauled vinegar out of Inwood, West Virginia, to Albemarle and Charlotte.

We hauled canned goods, a general line of canned goods, out of Baltimore to Charlotte, Gastonia, Albemarle, Sanford, and Shelby. Out of Frederick, Maryland, we hauled canned goods to Charlotte.

Out of Baltimore, we hauled empty barrels to Asheville.

Q. Out of Baltimore, Maryland?

A. That is right.

Q. Did you haul anything else between Maryland points and North Carolina that you recall, or South Carolina or Virginia?

113 A. Not that I can recall.

Q. Do you recall any other commodities that you transported there either from North Carolina or South Carolina?

A. No, sir; I sure don't.

Q. I believe you said you went with the Mauney Transfer about 1933?

A. That is right.

Q. As truck driver for Mauney Transfer Company in 1933, was the business growing, or do you know?

A. I don't know.

Q. Did you continue in operation very long, to your knowledge?

A. Only a couple of years.

Q. I believe you said that you were with them during a period of time in 1934?

A. Yes, sir.

Q. What were your duties during that period of time?

A. During the period of time from March, 1934, until the latter part of September, the same year, I was employed as general manager.

Q. For the Mauney Transfer Company?

A. That is right.

Q. As general manager, do you have a knowledge of the business being conducted by Mauney Transfer Company at that time?

A. Yes, sir.

Q. As manager of the Mauney Transfer Company, can
114 you recall any additional commodities that were handled during the period from March 1934, until September 1934, that were not handled prior to that time?

A. No, sir.

Q. Did your company from time to time during 1934, while you were manager, transport any new commodities that were offered to your comp for transportation?

A. Yes, sir; anything we could get to haul, we did. We were always looking for more business.

Q. Did you transport that business in the territory that you were operating in?

A. Yes, sir.

Q. What territory were you operating in along about that time, generally speaking?

A. Generally speaking, we were operating in and around this immediate territory from Cherryville and north, that is, Philadelphia, New York, Boston, and points en route, and we would do any local hauling that we could get.

Q. Did you operate in and out of South Carolina in that operation?

A. Yes, sir.

Q. You hauled back and forth whatever you had offered to go—was that the type of business you were doing?

A. That is right.

Q. Did you from time to time haul commodities that were
115 offered to different points than what you had theretofore hauled—did you add any new points to the points you had been going to from time to time?

A. Yes, sir. The shipper—whatever he would designate, regardless of where it was going, we would try to haul it for him. We wanted all the business we could get.

Q. You wanted to qualify that to the territory to which you were operating in, that statement?

A. Yes.

Q. Mr. Sullivan, I hand you a document. I ask you if that is your signature affixed to that document?

A. Yes, sir.

Q. And you were manager of Mauney Transfer Company at that time?

A. Yes.

Q. As manager of Mauney Transfer Company, you were authorized to sign that registration for them?

A. That is right.

Q. Is that copy of the registration under the Code of Fair Competition for the trucking industry?

A. Yes, sir.

Mr. RICHARDSON. I offer the document as exhibit No. 2.

Mr. ST. AMAND. Are the statements made in that paper correct?

The WITNESS. To the best of my knowledge, yes.

116 The EXAMINER. That correctly described the Mauney Transfer Company up to the time you left the last of September 1934?

The WITNESS. That described it up until the date of this paper.

The EXAMINER. Wasn't the situation about the same from July until September, or was there a change?

The WITNESS. Yes, it was practically the same.

The EXAMINER. Exhibit No. 2 is received in evidence.

(Exhibit No. 2, Witness Beam, was received in evidence.)

By Mr. RICHARDSON:

Q. The State on there, with the exception of the ones you named beyond New York, are the States in which you were conducting your operations generally?

A. Yes, that was the bulk.

Mr. RICHARDSON. The States listed on this paper with the exception of the ones he named north of New York.

The EXAMINER. If you were going beyond New York, why didn't you say so when you signed this?

The WITNESS. He asked for the bulk of my business.

The EXAMINER. If you were going beyond New York, why didn't you say so when you signed this for the Government?

The WITNESS. I don't know, sir.

By Mr. RICHARDSON:

Q. Did the man ask you to name the bulk of your business?

A. Mr. Wilkinson was the man that I signed this registration before.

117 Q. Do you recall whether he asked you about the bulk of your business being transferred?

A. I put it down there, the bulk of States most of our business was transacted in.

Q. That is what you recall, the States?

A. Yes.

Q. That is what you were trying to do when you put it down?

A. I named these States here, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, and New Jersey.

Q. The bulk of your business at that time was not beyond New York up in the eastern States, is that correct?

A. We had just an occasional load by request. We did not solicit any freight or make any great try toward getting freight going on up into New England. The way we would take it, some shipper had a load he wanted to go up there.

The EXAMINER. That is not your regular operation, that is an occasional operation?

The WITNESS. No, sir. We didn't go up there with any regularity, but we did go maybe twice, three or four times a month.

The EXAMINER. From this statement, all over 100 percent of your traffic went to New England or other States.

By Mr. RICHARDSON:

Q. When this statement was made, Mr. Sullivan, did the bulk of your business consist of transporting textile products, if you recall?

118 A. It did going north; yes, sir.

Q. And does it still? The bulk of your business still consists of transporting textile products?

A. Yes, sir.

Q. Going north?

A. Yes, sir.

Q. In addition to textile products, do you handle other commodities if and when they are offered to you for transportation?

A. Yes, sir.

Q. Has that been the case, as well as you know?

A. Yes, sir.

Q. You are still employed by them?

A. Yes, Carolina Freight Carriers, Mauney Transfer.

Q. How many pieces of equipment does that statement indicate you were operating at the time you registered under the Code?

A. I think it was eight. I am not positive now.

Q. Does that show you were operating eight?

A. Yes, that is right.

Mr. RICHARDSON. That is all.

The EXAMINER. I would like to ask you on that, what does the rough freight mean?

The WITNESS. That is more or less asbestos, tires, anything we could get other than just small shipments, that is maybe a

119 thousand pounds from one shipper or a few hundred pounds.

The EXAMINER. Was it freight of a character that didn't require much care as the cotton factory products—what does "rough" mean?

The WITNESS. That is rather a crude statement. I don't know what it refers to unless it was to the small shipments.

By Mr. RICHARDSON:

Q. Did you say that referred to shipments other than textile products?

A. Yes, sir.

Q. That was your idea at that time?

A. Yes, sir.

The EXAMINER. All right.

Cross-examination by Mr. TOXEY:

Q. Mr. Sullivan, when you were first employed by the Mauney Transfer Company, how many vehicles did they operate, do you recall?

A. It was either three or four.

Q. When you first went with them in February 1933?

A. Yes.

Q. How many vehicles did they have when you went back with them in March 1934?

A. Six.

Q. Did they continue with six until you left them in September?

A. No, sir. The latter part of June, we added two pieces of equipment.

120 Q. That was in June 1934?

A. That is right.

Q. Didn't you retire any of the old equipment during that period of time?

A. If I recall correctly, we made several trades, but didn't less or decrease the number of units.

Q. How long have you been employed by the new concern, the Carolina Freight Carriers Corporation?

A. About four months.

Q. During the time you were employed by the predecessors in interest, about how many trips did you make from South Carolina with the traffic that you mentioned—were there very many?

A. That is from South Carolina to and from North Carolina?

Q. Hauling the various commodities you referred to, tire fabrics——

A. And the machinery and the yarn out of Clover?

Q. Yes.

A. I would say about twelve.

Q. During the whole course of your employment with them?

A. That was just one individual truck that I was driving.

Q. It didn't amount to very much, did it?

A. We thought it was quite a lot.

Q. Were you still making the same trips or approximately the same number of trips when you were general manager of
121 the concerns?

A. No, sir. I didn't make any trips at all.

Q. You discontinued entirely going into South Carolina?

A. I didn't make any trips. I stayed in the office.

Q. What about the firm?

A. The same proportion of traffic; it was just as regular as it was before.

Q. Why is South Carolina not shown on this registration form introduced as exhibit No. 2?

A. I don't know that. [Refers to Exhibit No. 2.] I have an idea the reason South Carolina was not shown was that we were not operating out of North Carolina. This stuff was delivered in these other states which we traveled through.

Q. Weren't you delivering in South Carolina?

A. Yes, sir.

Q. Is that a true and correct statement of the territory which you were covering?

A. Yes, I think so; but it does not include South Carolina, though.

Mr. TOXEY. That is all.

Redirect examination by Mr. RICHARDSON:

Q. Did you say you were instructed, at the time you made that out, that they wanted to know about where the bulk of your
122 business was being transported from and to?

A. That is right.

Q. When you were doing that; were you guided by that understanding?

A. I was guided by Mr. Wilkinson's advice on this. I asked him to more or less give me some idea as to how he wanted to fill this out, about where the bulk of this freight went, or what not, and I filled it out according to his advice by my own knowledge, and by the way he wanted it filled out, about where the bulk of my freight went, and that is how I put it down.

Q. Were the South Carolina operations a small or large portion of that bulk you talked about?

A. They were a small portion of that.

Mr. RICHARDSON. That is all.

Re-cross-examination by Mr. TOXEY:

Q. Did your South Carolina business amount to as much as your Maryland business?

A. No, sir.

Q. As much as your District of Columbia business?

A. Well, there was more business in South Carolina. We had more business out of South Carolina than we did in the District of Columbia.

Q. Why is it you didn't show South Carolina? You show only 2 percent of your total business going to or coming from the District of Columbia. There was more from South Caro-
123 lina, so why is it that you didn't show it?

A. Well, the states in which we traveled through, in this right-hand paragraph said: "through which you operate." We didn't operate through South Carolina. We didn't operate in South Carolina only to make these pick-ups or deliveries or what-not.

Q. You actually operated in the state of South Carolina though; didn't you; or did you receive it from some other connections that delivered it to you?

A. No; we received it from these plants.

Q. Direct?

A. Direct; yes.

Q. On bills of lading issued by the Mauney Transfer Company?

A. Issued by these textile plants; mills in Clover, South Carolina, and various other mills.

Q. Were you operating as contract carrier or common carrier?

A. We were operating as common carrier at that time.

Q. Did you have any contract with anyone?

A. Not to my knowledge.

Q. Is this statement correct or incorrect here as to the sort of operations you were performing in 1934?

A. Well, the statement is correct as to what Mr. Wilkinson advised me; how he advised me to fix it.

Q. You were classified as contract carrier operating under specific contract?

124 Q. Did you have any contract written with anyone or oral agreement with them?

A. Yes, sir. We had some oral agreements.

Q. Did you have any written contracts?

A. I can't say whether we did or not.

Q. How long did that situation exist—up until you left it, 1934, all the time you were with them, they operated under an agreement basis?

A. Well, we usually kept up with the hauls. These mills depended on us hauling it. They either notified us, or we knew when their shipping days were, and we would be there.

Q. You hauled so much per load?

A. So much per hundredweight.

Q. Was there an agreement as to the figures of the rate you were going to charge?

A. That is right.

Q. You had a definite agreement?

A. That is right. They were based on the rail rates.

Q. Based on the railroad rates?

A. That is right.

Q. And did you personally make trips in this truck during the six months of your employment as a driver, hauling these various commodities from and to these various points that you mentioned?

A. Yes, sir.

125 Q. You couldn't tell me about how many trips you made, for instance, of textile machinery, could you, from Altavista to Salisbury?

A. I can give you a fairly good estimate as to how many.

Q. Let's have that.

A. Ten.

Q. Ten trips during the six months' period?

A. That is right.

Q. How did you fix ten as being accurate?

A. Well, I was figuring over a period of five months, about every other trip north, we would haul a load of machinery south.

Q. Would that same ratio apply to the other commodities you hauled, about ten trips a month, or ten trips during the time you were with them?

A. No; it wouldn't. Machinery——

Q. What did you haul mostly?

A. I hauled mostly textile products.

Q. From North Carolina to the east?

A. That is right.

Q. That is your principal transportation?

A. That is our principal transportation.

Q. Very little to South Carolina or from South Carolina?

A. It was not a great deal out of South Carolina at that time.

Q. Did the increase occur while you were with them?

126 A. What time do you mean?

Q. At the time you were truck driver.

A. Yes. It did from the time I started to work with them in 1933 until I left in 1934. It had increased in South Carolina.

Q. Not sufficiently though to make any definite statement in this registration code, showing that to be an important movement?

A. Well, we were still not getting a great deal of freight from South Carolina. The bulk of it was out of North Carolina.

Mr. Toxey. That is all.

The Examiner. No questions.

Redirect examination by Mr. RICHARDSON:

Q. Did your North Carolina business also increase during that period of time?

A. Yes, sir.

Q. The ratio will stack up about the same?

A. That is right.

Q. Mr. Sullivan, in making these trips to these various points, did you have loads there that were solid loads, or did you distribute the stuff to these points that you talked about that you went to in less than truck-load quantity?

A. We would have any number of stops, maybe five or six, eight or ten, and sometimes more than that, deliveries to make on a load. Occasionally we would have a load with only one or two stops, but it was unusual.

127 Q. And would your truck be loaded from one origin, from one mill, with those shipments going to various places?

A. No, sir. We would make these pick-ups from various shippers and load Pennsylvania stuff or Pennsylvania freight on the Pennsylvania truck, or Pennsylvania and New York on a truck together, and New England freight on another truck as to make it easier to deliver.

Q. That resulted in economy in operation, too, did it?

A. That is right.

Q. By having your trucks operated in that manner, could one driver contact quite a few different points in making deliveries and pick-ups?

A. He would have to, because he would have quite a few pick-ups to make and quite a few deliveries to make.

Q. Did you make the deliveries of these shipments to the point your shippers would direct you to do in this territory in which you were operating?

A. Yes.

Mr. RICHARDSON. That is all.

Re-cross-examination by Mr. TOXEY:

Q. During the period you were with the Mauney Transfer Company, or at least, in the interim, were you employed by any other truck company, during the time you were first with them and before you went back with them?

A. No, sir.

128 Q. You were not employed by any other truck company?

A. With the City Motor Company, Cherryville, North Carolina.

Q. What sort of business are they in?

A. Dodge and Plymouth dealers.

Q. When did you go back with this new firm, Carolina Freight Carriers Corporation? I understand you are with them now.

A. Yes, sir. It was the first of July or maybe the last of June or the first of July of this year.

Q. 1938?

A. Yes.

Q. You did not work with any other truck company as a truck driver during the period of your first employment with the Mauney Transfer Company and the second time you went back with them, and between that time up to July of this year?

A. No, sir.

Mr. TOXEY. That is all.

The EXAMINER. That is all.

(Witness excused.)

J. A. BLACKWELDER was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. What is your name?

A. J. A. Blackwelder.

Q. Were you connected with the Mauney Transfer Company at Cherryville, North Carolina, at any time?

129 A. Yes.

Q. What was your position with that company?

A. Secretary and treasurer.

Q. The Mauney Transfer was a corporation?

A. Yes; it was incorporated at first.

Q. About when was it incorporated, if you can recall?

A. I can't recall.

Q. I hand you a document, and ask you if that is the incorporation papers, and ask you to read the date shown thereon.

A. It is a copy of the incorporation papers. The date is the 6th day of May, 1933.

Q. Is that a copy of the incorporation papers?

A. Yes, sir.

Q. Were you secretary and treasurer of the corporation at that time?

A. Yes, sir.

Q. For how long did you continue in that position?

A. Until some time in 1935, I believe it was, when they sold to Mr. Beam.

Q. He, in turn, may have changed the name?

A. That is right.

Q. The time of the sale is based upon your recollection?

A. That is right.

The EXAMINER. You remained until Cohn and Grier Beam bought the stock of Mauney Transfer?

130 The WITNESS. That is right.

By Mr. RICHARDSON:

Q. As secretary and treasurer of the Mauney Transfer Company, did you have charge of the book records that were kept by that company?

A. Yes.

Q. Can you identify these books as being the book records of Mauney Transfer Company during the period of time or part of the period of itme that you were connected with it?

A. Yes, sir.

Q. Were those book records made by you or under your supervision?

A. Both, some by me and some under my supervision.

Q. Will you tell us something about the period of time that those books cover there, with regard to your operations, if you can recall, what the books indicate?

A. It seems this would cover a period from May through September.

Q. What year?

A. This would be September 1934, up to and including part of May 1935. This looks like it would be part of January, February, March, and April of 1934.

Q. I ask you, Mr. Blackwelder, if you recognize any of these bills or all of them as being the bills which were made out which were the records of the Mauney Transfer Company during the period of time that is indicated on the bills?

131 The EXAMINER. May I see one of those?

Mr. RICHARDSON. Yes.

The EXAMINER. The books?

Mr. RICHARDSON. Yes.

(Hands the Examiner Bills and books.)

The WITNESS. Is it necessary to look at all of them?

Mr. RICHARDSON. Satisfy yourself as to whether they are the bills of the transfer company.

The WITNESS. I am satisfied that they are true bills.

By Mr. RICHARDSON:

Q. Were those bills or were the Mauney records made under your supervision?

A. Yes.

Mr. RICHARDSON. That is all.

Cross-examination by Mr. TOXEY:

Q. Mr. Blackwelder, when did you first enter the employ of the Mauney Transfer Company?

A. Well, whenever it was—it was when we bought the first truck. It must have been in 1931.

Q. 1931?

A. Yes; but it was not a corporation until 1933.

Q. What were your duties with the concern when you first entered their employ?

A. Well, I really didn't have any official job. The only thing I did was sign checks and just look after it.

Q. Did you have anything to do with the transportation
132 end of the business securing traffic and routing of such as that?

A. No; I didn't.

Q. You didn't operate one of the trucks?

A. No.

Q. When was it that you first handled the transportation end, if you did handle it?

A. What would you call the transportation end of it—securing business?

Q. Securing the business or routing it.

A. I never did. I never did do that.

Q. Your duties were purely in a clerical capacity in the office?

A. That is right, yes.

Q. Did you personally make the entries in this book or these books that have been submitted?

A. Some, but some of them were not in my handwriting, it is in my sister's.

Q. Only two parties made entries in these books?

A. Well, I noticed by going through them a minute ago that a very small amount of notes are made in there by a different handwriting which could have been some of the drivers that come in late at night.

Q. Did the drivers have access to these books?

A. Yes.

Q. And they made entries as well as yourself?

133 A. I don't mean all the drivers, but just a couple of them. I would probably be out of town and my father would have him write entries that would probably be forgotten.

Q. What did you call these books—ledger books?

A. I suppose so.

Q. What do they show—the revenue on the shipments?

A. Yes. They show the revenue and they have the date of the bill of lading, and to make out a bill.

Q. How were the bills made, did you have any papers of any sort, papers or freight bills?

A. They were made direct from the bill of lading.

Q. So far as your personal knowledge is concerned, you have no way of determining whether these shipments were actually transported by this concern or not. They were handed to you by

the driver or some other concern, and you made the entries, is that correct?

A. I know they were. I stayed up late at night and helped load the trucks.

Q. You helped load the trucks?

A. Yes; and to see that the boys got their expense money, it was necessary that I be there.

Q. When you loaded the trucks, what traffic did they haul principally, do you recall?

A. What commodity?

Q. Yes.

134 A. Cotton yarns.

Q. That was the principal?

A. Yes.

Q. Where did it originate?

A. Cherryville, Gastonia, Hickory, Salisbury, and Belmont.

Q. Did you help load the truck at all those points?

A. No. They would pick these shipments up, bring them to the warehouse, and then segregate them, and put all——

Q. Where was the warehouse located?

A. The same place as the office, at Cherryville.

Q. Cherryville, North Carolina?

A. Yes.

Q. Do these books cover all the shipments the company made?

A. No.

Q. What commodity, what general traffic does this show?

A. Textile movement.

Q. Did you keep separate books for the other traffic that they hauled?

A. No; because most all other commodities were paid for at the time the load was picked up, so there wasn't any necessity to make an entry in the ledger like that. We would make a note of the deposit on the check stub.

Q. They were always paid in check?

A. I would say 99 percent of the time.

Q. These books only cover yarn, is that correct, yarn

135 movement from North Carolina?

A. That is all I noticed in there. There might be some rugs or hardware.

Q. You made the records in these books, did you not?

A. I made most of them.

Mr. RICHARDSON. The books will speak for themselves as to what commodities are named.

Mr. TOXEY. I was asking if he made them. He ought to know what is in them, if he made them.

The WITNESS. My memory is not that good.

Mr. RICHARDSON. We have the books. He can refresh his memory from the books.

Mr. TOXEY. He can look at them. I have no objection to his looking at them.

I don't have any other questions.

The EXAMINER. I would like to know this. Those books do cover more than textile shipments. They cover a good many shipments of oil and some local hauling. There is a good deal of purely local hauling in there, such as for the Rualne, some trips apparently to nearby places are shown on there?

The WITNESS. Yes.

The EXAMINER. What did a shipment have to do to qualify to get in that book?

The WITNESS. Well, it had to be a credit shipment, in other words.

136 The EXAMINER. How could you tell then about your cash—when you had cash shipments, how could you tell how much you were making, to whom the money belonged to, because I notice in there apparently some driver, Blackwelder or John M. Beam, every once in a while, an entry in there that somebody got one-half the trip. How do you keep your records on your cash shipments to know whose money that was?

The WITNESS. Well, I can't answer that, because I can't recall offhand.

The EXAMINER. Who were W. S. Blackwelder and J. W. Blackwelder?

The WITNESS. It must mean me and my father.

The EXAMINER. Apparently accounts for J. W. Blackwelder in those books, two of them, at least one in the name of John M. Beam. Did he own a truck and haul for you?

The WITNESS. No.

The EXAMINER. You hauled some stuff for him?

The WITNESS. We hauled some stuff for him—roofing.

The EXAMINER. What are those various entries, one who have the trip with an amount of money after it, what do they indicate?

The WITNESS. I can't ever recall an entry like that. I would like to see it.

The EXAMINER. Look at it.

Mr. RICHARDSON. Are these the shippers named that you
137 entered at the top of the book?

The WITNESS. That is right.

Mr. RICHARDSON. Indicating the firm you were hauling for?

The WITNESS. That is right.

The EXAMINER. Here is a name Richard Carpenter. You have got in there various amounts, and then you have gas, by cash.

The WITNESS. All right. We advanced him cash or we advanced him gas.

The EXAMINER. Who was Carpenter?

The WITNESS. He was a trucker that did a little hauling for us when we would get in a tight place. In other words, he would probably make a delivery for us.

The EXAMINER. What did J. W. Blackwelder do? It says "trip to Salisbury, October 6, 1934," Carpenter's hauling is right after that. What do those entries mean?

The WITNESS. Well, he probably made a trip over there in his car and we were just keeping a record of it so we could pay him for his services.

The EXAMINER. Here is one of these entries, one-half of trip. I would like to know what that means.

The WITNESS. I would, too [looks at book].

The EXAMINER. That is April 13, 1935, under account headed J. W. Blackwelder, the item is one-half of trip, $37.97.

The WITNESS. Evidently J. W. Blackwelder's name
138 doesn't mean anything up there [pause]. You see these are debits and credits on the column here.

The EXAMINER. That is on this credit side, is it now?

The WITNESS. I certainly can't recall that. Nearly all of these pages are in my writing, but this down here is my sister's writing.

The EXAMINER. I notice a good many shipments in here as "cash" and some "check." Are they all on paid-out bills?

The WITNESS. Yes, sir.

The EXAMINER. Do you mean you made one of these trips where there was some kind of one-half adjustment, such as is indicated by that thing back there. I don't know who it was with or what it was, but I figure one-half of something was arrived at. If you were paid in cash for a trip, do you mean it wouldn't be in the book at all?

The WITNESS. It should and there is in most cases in this book or one of these two or some others.

The EXAMINER. This was a day book which was supposed to reflect what your business was, so for your taxes or whatever purpose, you would have a record of what you were taking in or what you were paying out. It is headed a day book, and that is what it was, is it?

The WITNESS. Yes.

The EXAMINER. Of course, if you only put your credit business in your day book, it wouldn't reflect you' business at all, would it, if you did any cash business?

139 The WITNESS. Well, those transactions would be carried on the check stub.

The EXAMINER. They wouldn't go in this book, would they? There are a good many items in here headed just "cash." I can't understand how you arrive at it.

The WITNESS. It wouldn't mean actually cash money.

The EXAMINER. I can't understand how you arrived at this "Cash," "cash out," if you didn't have some kind of cash payments in.

The WITNESS. That page there that you have reference to could have been my father's truck, and he could have done some hauling for Mauney Transfer separate from Mauney Transfer; although at the same time he was a party of Mauney Transfer and that "cash" is where we could have advanced him money for expenses in making a particular trip, because when we were busy——

The EXAMINER. Practically all the entries in here are under pages which are headed either with the name of a cotton mill or J. W. Blackwelder or John M. Beam, or I believe, there is no name on here except the name of a cotton mill and those two individuals.

The WITNESS. Well, John M. Beam is a lumber man, and he deals in lots of roofing, and we haul lots of roofing for him.

The EXAMINER. Sometime would his private truck be prevailed of or used when you had an overflow of traffic?

140 The WITNESS. John M. Beam's wouldn't but J. W. Blackwelder's would.

The EXAMINER. His would?

The WITNESS. Yes.

The EXAMINER. Here is "trip to depot" 75 cents, a lot of them in there. You kept some records of your local hauling as well as your long distance?

The WITNESS. Yes.

The EXAMINER. I have no further question about this. Are these books and records which you were custodian of the records, turned over to Mr. Beam when he bought out the company?

The WITNESS. That is right; yes, sir.

The EXAMINER. That is all I have to ask.

By Mr. TOXEY:

Q. Are you with the Carolina Freight Carriers Corporation at the present time?

A. No.

Q. You discontinued affiliation with the trucking concern in 1935, is that correct.

A. That is right.

Redirect examination by Mr. RICHARDSON:

Q. Do you mean by that you discontinued when you sold to Mr. Beam?

A. That is right.

Q. You say 1935, to the best of your recollection?

141 A. Yes.

Q. You don't have any record here to substantiate the particular date on which the transaction was made?

A. No, not here, but since I turned that over in my mind, it might have been 1936 when we sold out. Mr. Beam, I am sure, can remember it better than I can.

Mr. RICHARDSON. That is all.

The EXAMINER. Any further questions?

Mr. TOXEY. None.

The EXAMINER. All right.

(Witness excused.)

J. T. GRIFFIS was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. What is your name?

A. J. T. Griffis.

Q. Mr. Griffis, with what firm are you connected?

A. Southern Asbestos Company.

Q. Where?

A. In Charlotte.

Q. What is your position with the Southern Asbestos Company?

A. Traffic Manager and in charge of the sales.

Q. In the capacity of traffic manager and sales manager, do you have knowledge of the transportation requirements of your Company?

142 A. Yes, sir; I do.

Q. How long have you been employed as traffic manager or sales manager or both of the Southern Asbestos Company?

A. Well, I have been with my company for sixteen years. I have more or less grown into the company as it developed, and especially since 1930 I have been wholly in charge of this particular work.

Q. That is the transportation?

A. That is right.

Q. And the sales business?

A. That is right.

Q. Did you have occasion to use the transportation services of Mauney Motor Lines or Mauney Transfer Company?

A. Mauney Transfer Company, I believe—yes, I did.

Q. About what time, if you recall, did you use the services of Mauney Transfer?

A. I believe that I started in 1931.

Q. Mr. Griffis, I hand you a document, and ask you if that is a statement representing shipments transported for your company by Mauney Transfer Company prior to June 1, 1935?

A. These bills are all very familiar to me as they are the ones used by this company, and we have quite a number in our old files exactly the same as these. While there is a good many points listed here, there are perhaps other points that this company served us to.

143 Q. Do you mea' by that that there may be additional points that they transported your products to?

A. Yes. The statement of shipments here on the white piece of paper is a tabulation of these bills, and that is not a complete tabulation by any means.

The EXAMINER. Is it correct as far as those bills are concerned?

The WITNESS. Yes, it is correct. It is a good representative of the part of the country that they transported shipments to and from.

By Mr. RICHARDSON:

Q. Have you had the occasion to use the services of Mauney Transfer since the dates shown on this statement?

A. Yes, I have. I have used their services beginning 1931, and I am sure that that would take us through 1935, perhaps not altogether exclusively, because there were other trucking lines that handled some shipments for us, but they did handle our shipments during that time, and they are now handling them.

Q. They are now ha/d'ing part of your business?

A. Part of our shipments, yes.

Q. Did I understand from that, at one time, they may not have handled some of your business?

A. That might be explained in this way, that at the time of those bills, I can positively say that we have bills showing where
144 they did handle them, but later on, all that we could show would be the fact that we knew they handled the shipments on brokerage bills.

Q. Do you mean by that that the bills of lading may have carried different names?

A. Yes, but they actually transported the goods.

The EXAMINER. Whose bill of lading was it at the other times?

The WITNESS. Perhaps I had better explain it in this way. These bills, as you will see, are blanks with the names typed in, and they asked to make checks payable to this company, Mauney Transfer.

By Mr. RICHARDSON:

Q. Just at that point you mentioned something about an arrangement. Does your record indicate, or do you recall from memory whether these shipments were tendered Mauney Transfer as a result of solicitation by Mauney Transfer from you—or their representative?

A. It was their representative, because as we all know, during a period there in 1931 and 1932, business conditions were not the best in the world. We located here in the south, and had to find some way to compete with the service rendered in what we term the "north," which would be, for example, New York, New Jersey, and also the New England states.

Therefore, as we were in this muddle to try to find some way to get our goods there, we were then taking, our time was so long that we couldn't obtain the business or at least our
145 proper share of the business, and certain truck services that we had used were very unsatisfactory, Mr. Orlando Hudson came to me one day and told me about a company in Cherryville having two or three trucks, and that he represented himself as agent of certain trucking lines and on a brokerage basis, they would solicit our business and load these trucks.

The statement was made to me which sounded encouraging at that time, "Why should you bother with having so many people coming in soliciting your business with one or two trucks when we are in the business, meaning myself and Mr. Akers in Gastonia. We know all the truckers, and we will be responsible for your shipments to your various shipping points. We will pick up those shipments each day, take them to our warehouse and ship them by the trucks going out."

That relieved us of quite a burden or responsibility there. I asked the type of services he was prepared to render. He told me at that time he had two or three trucks operated by the Mauney Transfer Lines out of Cherryville, that were available for trips as we might require them and to what points our shipments were destined.

I outlined to him that we shipped generally along the Atlantic Seaboard and into the New England states; as an example, Baltimore; Philadelphia, North Wales, Pennsylvania; Trenton, New Jersey; Passaic, Paterson, New Jersey; New York City, and on into New England by Boston, Providence, Pawtucket,
146 Middletown, Connecticut; Hartford, New Haven, Worcester, Massachusetts, and could he assure me of the service especially in truck-load lots or perhaps a mixture along the lines that he might be going. He assured me he could, so we immediately started trying that service, and we found it very satisfactory,

We began to more and more use the truck service, and in addition to outbound shipments, we used that to bring in raw materials of various types, brass wire, zinc wire, in fact, most any article that we had coming in for the use in our business. They were required to bring in for us from various parts of the country.

As our business began to broaden and his activities broadened, of course, in soliciting other business, it was necessary for them to call in other trucks, and many of the trucks that they used had the name of the owners on the trucks. That is why these bills are made like that, because each truck owner would come to our place to get shipments. If we had three truck loads, there might be three different trucks.

Q. Owned by three different companies?

A. Owned by three different companies. Therefore, on these bills, our customers began to complain that they would have to get additional supply of checks to write out enough checks to pay the bills with so many different trucking companies, why couldn't we get one company inasmuch as all the checks went to the
147 same street address in the same town. I immediately asked Mr. Hudson the same question, and he thought well of that. There was some delay in getting a uniform bill.

Q. What time was that, do you recall?

A. That must have been the latter part of 1933 or 1934, to the best of my memory.

When I couldn't get any response to uniform bill, I suggested I was going to have some printed inasmuch as the combination of solicitation by Mr. Akers and Mr. Hudson, I was going to name the outfit Akers and Hudson. Promptly thereafter the bills were produced similar to that, but didn't carry each individual trucking line, but the bills and the letterheads were entitled "Akers and Hudson, Freight Brokers."

Q. Where were they located?

A. In Gastonia.

These trucks continued to haul on the same basis as they had heretofore hauled, but each time the bill would go under the name of Akers and Hudson. I believe they had some particular code numbers on there which would show them the fellow they owed the money for the hauling, rather than have each company send them the check.

Now, up to that point, you see I could produce Mauney bills, but after that point, it would be Akers and Hudson's bills.

The EXAMINER. You couldn't tell whether Mauney hauled them, whether Mauney did the hauling or some other carrier?

148 The WITNESS. Well, no; the bills would not specially show that.

By Mr. RICHARDSON:

Q. That is, these bills that you have?

A. That is right, but we knew who was hauling, because the trucks continued to bear the name, for example, on the door of the tractor, "operated and owned by Mauney Transfer," and it would also be along the bottom of the trailer, and across the side in big letters, "Akers and Hudson." That was, I suppose, my idea, because I was trying to get something uniform to go in to our customers and show that we were using a uniform method of shipping.

Q. Was it your understanding that these various truck lines after 1934, after this billhead came out, were operating in the same manner that they had operated theretofore?

A. I know that to be a fact, and I stated previously that these trucks were all marked, "owned and operated" by the particular parties who owned the truck, and in addition to that, we were continued to be solicited, and we knew that was going on. That was perfectly agreeable to us, because after all, they were taking the burden of obtaining the necessary equipment that we desire, as well as posting with us copies of insurance policies covering each individual operator that worked for them. We required the posting of the insurance to be sure that our goods were transported in a safe way.

The EXAMINER. You placed all the responsibility in one
149 place, that is Akers and Hudson, rather than against the individual trucks.

The WITNESS. That is the idea, because at that time, I think you will recall, that a shipper might have been in what you would call a little embarrassing position, because it would take all of his time answering the door for solicitations of trucks. Frankly, I got to the points where I couldn't answer them all. I asked my secretary there that whenever a trucker came in soliciting business to refer him to Mr. Hudson or the Akers and Hudson outfit in Gastonia.

By Mr. RICHARDSON:

Q. Was it your understanding that Akers and Hudson were operating as freight brokers?

A. Absolutely; yes, sir.

Q. They, in turn, secured the services of various truckers or truck owners to transport your goods?

A. That is right; yes, sir.

Q. And that they, during the period of time after 1934, were operating and calling on you and soliciting business for these various truck operators?

A. That is right; yes.

Q. They were not calling on you, leading you to believe they were going to transport the goods at all on any trucks that belonged to them?

A. No; they never did that.

Q. How long a period of time did that situation exist, if you recall?

150 A. It was my understanding that they continued—and when I say "my understanding," I am basing my statement upon the fact that these trucks continued to come in to our place with the same notations, "owned and operated" by the respective owners until the latter part of 1935; and on or about the first of 1936, those trucks were then repainted or otherwise, and the names "owned and operated" were taken off. I was then curious enough to ask the question, "Why?" It was my understanding from the information verbally given that this was to better comply with the Motor Carrier Act, that they would continue to operate what they termed "leased trucks," but they were buying certain equipment, because you couldn't operate unless you owned some equipment.

I believe that happened somewhere close to the first of 1936.

Q. Was it your understanding that up until 1936, that Mauney did not lease his truck to Akers and Hudson, but that——

The EXAMINER. I don't know how this man could have any understanding except what he saw by signs on the trucks. I think he definitely stated what he saw on the trucks and what his understanding w[illegible] would not be material.

Mr. RICHARDSON. Strike that question.

By Mr. RICHARDSON:

Q. Did Akers and Hudson, when soliciting business from
151 you, represent to you that they were still soliciting business for various operators of the trucks up until 1936?

A. Perhaps I could answer the question in this way, that I knew these boys both personally, as well as many of the drivers of various trucks, and it was no secret that they were freight brokers, and that they did solicit business. For example, as I was told, they would get, I believe, 20 percent commission for obtaining the shipment. Therefore——

Q. For these various truck operators?

A. For the various truck operators; yes.

Q. During the period of time that Mauney Transfer Company was transporting property for you, did you, from time to time, add to the number of commodities that they were transporting as your business conditions required?

A. Originally, they perhaps transported one commodity as a trial, so we might determine the type of service, and what we could expect from a trucking firm. That would be asbestos cloth.

I would say that was the first commodity into Trenton, New Jersey.

After receiving satisfactory service there, I asked about another very important shipping point of ours, Middletown, Connecticut. I asked them if it would be possible for them to give me some reasonable service there. It was suggested that the best way to find out was to try it. We did try it and have been ship-
152 ping by truck ever since, because the service was third-day service from the time that it left here, it was at the destination.

At that time, we were being called upon to pay a freight rate based on a minimum of a carload; otherwise, considerably higher charges would be involved. Therefore, we were then permitted or in a position to ship in smaller, more convenient, quantities, and get it there within half the time that we had previously been able to deliver it. That, of course, made it show up that we, in the south, were then in position to deliver equally as well as our competitors located many miles nearer to the plant. We were able to obtain additional business from that service, and from that point we enlarged the service to many other points both in truckloads, and then we might property be termed a "package carrier," if you were speaking in railroad terms.

We would load the truck to the capacity, but not necessarily to one destination. It would be destined all along the Atlantic Seaboard, and then we would perhaps have another truck that we would lead in cooperation with truckers for New England. We might have destined to Middletown, Connecticut, some 7,000, 8,000, or 10,000 pounds. That wasn't sufficient to completely load the truck, so we would take such towns as Waterbury, Connecticut, Hartford, New Haven, and other surrounding territory to which we would fill out the truckload with other ship-
153 ments, ranging from perhaps 500 pounds to 5,000 pounds.

Q. That was loaded on the truck when it left from this end?

A. That is right.

Q. In the beginning, you stated, I understand, that they transported outbound from here only asbestos cloth?

A. Yes.

Q. Will you tell us how the commodities which you shipped increased in number, if at all, after they started outbound from your plant here—what other commodities, if any, did you add to the list of commodities that the Mauney Transfer Company was hauling for you?

A. After we found the service they were able to render on a few commodities, we then——

Q. Name the Commodities.

A. We then informed our sales force, instead of waiting for ten days to two weeks for the customers in their respective territories to get shipments, that we had at last found a way to meet competitive conditions within the territory. Therefore, we suggested they no longer had to talk in terms of carloads, for we were in position to ship truckloads, and they would give three-day service, and at a maximum of four days to any point south of Boston or Worcester, Mass.

On that basis we then broadened our scope of using truck transportation to where it covered every commodity that we manufacture and receive and their tariffs, they show quite a
154 number of commodities of ours now. Those things have been worked into the tariff, starting back at the beginning where we first tried it on one product from that point on.

We broadened our field to include everything that we make and receive. In a simple language, we call it asbestos textile products, principally cloth, yarn, packings, tapes, tubings, and there are many other products there.

Q. Brake linings?

A. Brake-lining materials, but not the finished brake lining.

Q. Did Mauney Transfer Company from time to time as your business grew—was he given these various commodities to haul outbound from your place?

A. Yes, he was; and he was also given commodities to bring back, as I started before, principally brass wire, brass, zinc, and copper wire.

When we finished with the spools and cases with which the wire was shipped, we, of course, had to return these to points like Ansonia, Connecticut; Perth Amboy, New Jersey; New York City; Ossining, New York; Rome, New York; Newark, New Jersey, and the principal wire-manufacturing points.

Q. Did you feel free to call on Mauney Transfer Company to transport these various commodities you were adding to your products or the raw materials you were gradually adding to the list of materials coming in to you?

A. We felt perfectly free to do that, because they so-
155 licited our business on the basis that they were hauling everything and were prepared to haul everything that anybody cared to offer them for transportation.

Q. Did you feel free to call upon them to go to different points from time to time from points they had theretofore gone to?

A. They did do that.

Q. In the Seaboard territory that you described a while ago?

A. Yes, sir. We felt perfectly free to do that, because they had represented themselves as wanting to do it, as well as being prepared in the way of equipment and regularly covering that terri-

tory. I mean that territory along the Atlantic Seaboard to New York and into the New England states.

Q. Did you find that the motor truck service rendered to you by Mauney Transfer Company was advantageous to your company in enabling you to better serve your customers up and down the road there?

A. I positively do. It not only enabled us to better serve our customers, but enabled us to meet competition which is located in the territory, and deliveries was not a factor with them like it had formerly been with us. We had about come to the point where we either had to close this plant up here or make it a paying proposition. In 1930, our management was rearranged, and the company sent a new man here to take charge with specific
156 instructions to either see that this company sold enough merchandise to make it a paying proposition or close up.

Q. Did the trucking industry play an important part in making that pay?

A. Well, after all, had we not been able to deliver it on a par with our competitors, we certainly would not have been able to stay in business; and we would not have been able to give the trucking industry something over 7,500,000 pounds of freight last year.

Q. Mr. Griffis, from time to time, did you find customers calling for your goods at different points, that is in the territory up and down the Atlantic Seaboard, would you develop any new accounts for your goods—in other words, located in different towns along the way?

A. I am glad you asked that question. That reminds me of starting a fire on top of a hill on a dark night.

Without exaggerating the story, our accounts that had been receiving truck service are in a group that more or less, shall we say fraternize among each other, and what one gets, when he finds 'omething, he usually tells the other one about it, so we have had calls, telephone calls, and believe it or not, from our competitors telling us that knowing of the service we have been able to render in that part of the country, and their product is so crowded, would we sell them some merchandise, and when could we deliver
157 it. I would tell them from two to three day service. I recently took an order for 15,000 pounds on this basis. The customer asked me when I could deliver it—on Friday, and I responded that the order would be there at 8 o'clock Monday morning. I got the order, and the material was delivered on that basis, that if I could deliver it by that time I would get the order, but if I couldn't deliver it by that time, I wouldn't get the order.

Q. Where was that shipment destined to?

A. It happened to be destined to North Brookfield, Massachusetts.

Q. Is that a point you serve?

A. That is a competitive manufacturing point.

The EXAMINER. Who moved the freight?

The WITNESS. Carolina Freight Carriers.

The EXAMINER. Was that recently?

The WITNESS. Yes, sir. That is representative of what we have been able to do with an honest-to-goodness truck service, if you will pardon the expression.

By Mr. RICHARDSON:

Q. From the beginning in 1931 and 1932, on down, based upon the representative of Mauney Transfer or Mauney Transfer representative calling on you, did you expect them to transport to these various points as they developed from time to time along with your business—the new points?

A. Yes, we did. They, of course, started with only one point and then continued on to many points. I suppose that every week there were different shipping points, requiring that
158 rates be figured, and everything taken into consideration by calling and finding out whether they would be able to handle the shipment to this point and that point. We would always take a complete load of shipments regardless of points destined within that territory, and give them all the shipments. If we didn't know the rates, we would give it to them without rates. They would figure the rates and fill in the blanks as to the rates later on.

We don't confine our shipments to any specific point by truck or by rail or by any other method of transportation. If we thought that we could get the same service to other points as we had been getting to the few points, we would always ship it by truck. We were always assured and later it was confirmed that those points were properly served and efficiently as the first ones that we started with.

I believe today that there are about three hundred shipping points that are being served by truck. That might sound like only a few points, but when you consider that our business is not a retail business, it is volume business. All of our products must go, except in a few cases, to other manufacturers or converters.

People will buy our products such as yarn, and we have it in many forms of finished products. For example, brake lining, they will buy the cloth, rubberize it, and make it into packings.
They would also buy the cloth and make it into fire
159 prevention suits or clothes, gloves, mittens, and many other things.

Q. Mr. Griffis, based upon your knowledge of business conditions, and your observation with regard to business, would you say the importance of the truck service to other industries in this territory applied in like manner with what you have described in connection with yours?

A. It happens that we have a textile plant in Charlotte and also in Trenton, New Jersey. Our textile plant in Trenton is located on the opposite side of the road to our finishing plant. Due to the service we are able to get from the trucking industry and the lack of business, generally our northern plant stands idle today; whereas, our southern plant is running. We are producing all that we can at the present time here because to Trenton, New Jersey, we have an overnight service. That shipment leaves here today, and we can be assured that sometime tomorrow afternoon, ordinarily in the evening, that is going to be delivered. That could just as well resulted in this plant being closed down, and that one up there running, had it not been for the fact that we are in position to get today, a service that was not available ten years ago.

Q. Does your knowledge of general business conditions lead you to believe that the service as applied to your company would be the same to other industries or manufacturers in this territory?

160 The EXAMINER. How is that material in this case, after all?

Mr. RICHARDSON. Strike the question.

The EXAMINER. I think this man is an excellent witness and knows the truck business. I believe it is not the issue in this case what the necessities of the public may be as to truck service. The issue in this case is what did Mauney Transfer Company do before June 1, 1935, and what did Mauney Transfer Company do after June 1, 1935, up until the time Mauney Transfer Company became Carolina Freight Carriers Corporation, when the name of the corporation was changed, if the name was changed or if a new one was formed, from then on, what they did, that is the only issue in this case, whatever the needs of anybody may be. That would be a question of public convenience and necessity, which is not at all the issue here, because this company can continue to do what its predecessor did on June 1, 1935, whether anybody needs it or not.

Mr. RICHARDSON. That is all I have.

The EXAMINER. All right.

Cross-examination by Mr. TOXEY:

Q. You employed the Mauney Transfer Company in about 1931?

A. Through their representative, yes.

Q. Did you deal directly with Mauney Transfer Company or through brokerage?

161 A. Through their representative, Mr. Hudson, representing himself. Originally, as I stated, his original representation to me was that he had perhaps two or three trucks available in Cherryville under the name of Mauney Transfer Company, and that they were regularly hauling materials, but he knew that they could haul more and therefore, he had been given permission to solicit for them on a commission or brokerage basis.

Q. So you did not deal directly with Mauney Transfer Company, but only through Mr. Hudson?

A. I assume that would be dealing directly with them if he had been given permission by them to represent them. That would be the same as dealing with them, in my opinion.

Q. Do you know whether or not he was employed by the Mauney Transfer Company?

A. He was, of course, paid on a commission basis, which in our business constitutes employment.

Q. He was a freight broker, and not only represented this particular truck line, but many more.

A. That is true. We have some salesmen in the same way, but still we call them our representatives. As a matter of fact, they are.

The EXAMINER. The point I want to get in there, Mr. Toxey, is, that up until—let us say some time in July 1933, at least so far as the tangible evidence is concerned that is here today,

162 you paid directly to the Mauney Transfer Company for the transportation that was furnished for their trucks—you paid them directly?

The WITNESS. We, or their customers. As an example, our shipment might move on a collect basis.

The EXAMINER. But the bills were in their names and the payment was made direct to them?

The WITNESS. That is right.

The EXAMINER. Some time along in there, I take it, that must have been about the last bills that you had which were made out in the name of Mauney Transfer. Undoubtedly you got the latest ones that were made in their names prior to June 1, 1935, because the issue in this case is to show what they were doing on June 1, 1935.

The WITNESS. I think so.

By Mr. TOXEY:

Q. Thereafter the bills for such transportation as may have been performed by trucks owned by Mauney Transfer were rendered in the name of Akers and Hudson?

A. That is right; as brokers.

Q. The bills were in their names?

A. I paid them.

Q. All the hauling which was done on bills rendered in that name of Akers and Hudson and on freight bills issued in their names was not done by Mauney Transfer, however?

A. Nos, sir; many of them.

163 Q. Whom did you hold responsible for any damage to shipments which you intrusted the carriers operating under bills in the names of Akers and Hudson?

A. The operators themselves.

Q. You would proceed directly?

A. Well, let me explain the point in this way. As new operators, for example, might be taken on, these operators' insurance policies, or may I say insurance agents, would give us a statement to the effect that they were properly insured and the premiums paid. The insurance company did that for us, and I further asked the insurance company for this protection at any time that any of these operators for any reason should be eliminated by insurance to give me notice of that.

The EXAMINER. If the insurance lapsed, they were to notify you?

The WITNESS. They notified me.

The EXAMINER. Did you ever see any of those insurance policies?

The WITNESS. I am sure that I saw some of the policies, but being more or less a routine proposition, I would usually get those policies and pass them along to the files, because I suppose it is like all other insurance policies, you don't pay much attention to it except for the fact that you have got the proper insurance coverage.

164 The EXAMINER. No doubt during that period July 1933, when this arrangement began to be used up until some time late in 1935 or early 1936, when there was some change at least upon the manifestations upon the trucks used, you had some damages claims arising out of transportation on Akers and Hudson bills?

The WITNESS. Our damages by any method of transportation due to the commodity itself is almost unbelievably small.

The EXAMINER. It is not a breakable or perishable commodity?

The WITNESS. I do remember one time that there appeared to be some damage, but we never made a charge because it didn't require very much work or expenditure, so we didn't call them in, because it was due to heavy sleet and ice. A truck load of our stuff, as well as the driver, went into the icy waters. All that was necessary to do to that material was to take it out and dry it and use it. Damage claims, other than a fire, and most of that won't burn, is something that we really have little to worry about.

The EXAMINER. Your damages result more from misdelivery or delay?

The WITNESS. Loss.

The EXAMINER. Did you have any of those?

The WITNESS. I can't recall having a completely lost shipment.

165 The EXAMINER. Whom would you have expected to settle directly with you, Akers and Hudson, or some carrier?

The WITNESS. Naturally, in a case like that, I would have gone to my insurance policy and would have found out what this insurance policy covered, and it is my remembrance of the matter now that each individual was covered by a policy.

The EXAMINER. You would go to the individual policy?

The WITNESS. Yes.

The EXAMINER. When you called Akrers and Hudson to pick up a shipment, or if they called you to see if you had any shipment, did you ever designate whose truck you wanted to haul the shipment?

The WITNESS. No. When I was leaving that in their hands, I figured that they should put it on the equipment or the truck.

The EXAMINER. You left that to their discretion?

The WITNESS. I left that more or less to their discretion.

The EXAMINER. That may have been any carrier who was operating under bills of lading bearing the name of Akers and Hudson, with whatever other description was on there?

The WITNESS. That is all very true. Of course, I could name several of them that I know positively did operate, and of course, being as close to it as I was, as I was handling the shipments along with one other member of our organization, the shipping

166 clerk, I could know daily just about whose equipment was being used.

The EXAMINER. All of this equipment had the name on the cab of the tractor, I suppose, usually on the door?

The WITNESS. Yes.

The EXAMINER. Owned and operated by Mauney Transfer or whoever else was the operator?

The WITNESS. That is true.

The EXAMINER. And on the trailer in large letters across the front and across the side was A & H or Akers and Hudson?

The WITNESS. I believe that for a long time Akers and Hudson was across the side.

Of course, there were times, you know, when, as their business developed, they would employ trucks that didn't even have any name on it at all.

The EXAMINER. If the truck came there sent by them, what inquiry would you make as to who the trucker was, if any, or would you call them to see if they sent him there?

The WITNESS. It wasn't necessary to do that.

The WITNESS. I mean if that was one that didn't have any name on the truck.

The WITNESS. I might answer your question in this way; suppose we had truck load of material to be transported. I would have called one of the boys that I was familiar with, and tel' him what I had. He would say, "Well, I don't have any of my regular trucks available, but I know where I can
167 get hold of a man. Will this fellow be satisfactory?"

I would answer with this statement, "It is O. K. by me, providing he has the necessary insurance, and what kind of truck does he have, and what shall I expect?"

He would proceed to tell me he had a certain type of truck, etc. When this man came in, after that description, there would hardly be any occasion to call and verify.

The EXAMINER. You would know before?

The WITNESS. Yes.

The EXAMINER. He would carry it on the Akers and Hudson bill of lading?

The WITNESS. That is right. If it was some of the regular equipment such a' Mauney, Hewitt, Lindley, Slagerhoff, Schlets, I mention those because I know those. They were coming in frequently, and there would be no question about those at all.

The EXAMINER. You would know that was one of the group who were operating on these Akers and Hudson bills of lading?

The WITNESS. Yes.

The EXAMINER. I see. I have no further questions.

By Mr. TOXEY:

Q. Did Akers and Hudson own any equipment at all that you knew of at the time you were dealing with them?

A. Not to my knowledge.

Q. They were purely and simply freight brokers?

A. That is my understanding. They solicited it themselves.

The EXAMINER. All the trucks that hauled for you, to
168 your recollection, on bills of lading bearing the name "Akers and Hudson" had some owned and operated name on the truck up until June 1, 1935?

The WITNESS. I would say yes, they had on their owned and operated.

The EXAMINER. By some name?

The WITNESS. By some name other than Akers and Hudson unless it was a plain truck, as I previously explained, until sometime the latter part of 1935.

By Mr. TOXEY:

Q. Even the unnamed trucks, were they not represented to you as being owned and operated by Akers and Hudson?

A. No, sir. That was plainly understood. In fact, I was responsible for the letterhead, I think, being changed, because it sounded like——

Mr. RICHARDSON. Did they have some correspondence or letterheads with that on it, the freight brokers?

The WITNESS. Yes.

Mr. RICHARDSON. What time was that, if you recall?

The WITNESS. That was back in the early days. It must have been perhaps in 1931 or 1932, I don't know whether it was as late as 1933 or not.

Mr. Richardson. Did I understand you to say it was at your suggestion that this name, Akers and Hudson, was adopted by Mr. Akers and Mr. Hudson?

The WITNESS. I think I could be called guilty of that,
169 yes. They had to name it something.

Mr. RICHARDSON. That was for the purpose of simplifying?

The WITNESS. Yes.

Mr. RICHARDSON. Issuing checks and to simplify your bookkeeping records, and not as a matter of giving it to them as a motor carrier?

The WITNESS. That is the idea. In other words, we knew the same lines would continue to handle it, but our business required that we go to the manufacturers throughout the country so to speak, so we naturally had to represent ourselves the same way, and we couldn't do it with a lot of little carriers, and asking them to write out so many different checks, and they would pick it up right quick that it was going to the same address and the same city. They would know it was the same outfit.

By Mr. TOXEY:

Q. Since 1936, have you continued to do business with Akers and Hudson or with the Carolina Freight Carriers directly?

A. Both.

Q. Akers and Hudson performed the transportation for you?

A. Yes, sir.

Q. As well as the Carolina Freight Carriers?

A. That is right.

Mr. RICHARDSON. Since 1936, Akrers and Hudson has been representing to you that they have been transporting the
170 goods or trucks owned by them?

The WITNESS. Not necessarily all trucks. It was my understanding that they owned part of the equipment, but still leased quite a number of trucks.

By Mr. TOXEY:

Q. You don't mean by that that they owned part of the old Mauney Transportation equipment, do you?

A. I would say that they owned certain trucks themselves outright.

Mr. RICHARDSON. You are speaking of 1936 now?

Mr. TOXEY. Yes.

The WITNESS. I understand that they owned certain trucks outright.

By Mr. TOXEY:

Q. They have since gone into the trucking business?

A. That is right.

Q. They are not in the brokerage business any longer?

A. And in addition to the trucks they owned, it was my understanding that they would, for example, take a man that owns a truck and lease it from him to do hauling for them, and take a certain percentage of the revenue as payment for the services rendered.

Mr. RICHARDSON. That has been since 1936, that you are speaking of now?

The WITNESS. Yes.

By Mr. TOXEY:

171 Q. They didn't have that sort of arrangement prior to that time, did they, prior to June 1, 1935, that they leased someone else's trucks?

A. I don't believe they actually had leases. Of course, you understand that is their business, not mine. I don't know what they did or what they didn't do, but it would have been my understanding that prior to that time, they didn't have the equipment themselves leased by any means. They were free to haul for themselves, or they could haul for them as the case may be. I understand they did do their own hauling as well as do the hauling for Akers and Hudson.

Q. Askers and Hudson were simply brokers?

A. That is right.

The EXAMINER. All the hauling Mauney Transfer equipment did for you between, say, July, 1933, and some later day, I suppose after January 1, 1936, was done through the relationship with Akers and Hudson, and not directly with them in their own name, were you?

The WITNESS. Perhaps I forced them to do that because when they would solicit business from me, I would ask them to go through as Akers and Hudson.

Redirect examination by Mr. RICHARDSON:

Q. But you did have them to call on your direct for shipments during that period of time?

A. The trucks did, yes.

Q. Mauney Transfer?

172 A. Yes.

Q. You would refer them back to Akers and Hudson as brokers in handling your business?

A. Yes. You see we had, as the truckers call it, the "gold bricks" coming down, which would be small cases of wire. You could put fifteen or twenty thousand pounds of these cases of this wire, and it would be no taller than just to cover the floor. I come to know these boys very well, and they come to know me, and they would say, "when are you going to have another shipment of wire coming out, can't you get them to let me have that one?"

I would tell them each time that they had better see Mr. Hudson. As the old saying goes, "you can hardly serve two masters," so I told them to see him and let him arrange that for them.

Q. That was merely to relieve you of the details of each individual operator?

A. That is true.

Mr. RICHARDSON. That is all.

The EXAMINER. That is all.

(Witness excused.)

A. D. EUBANKS was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. What is your name?

173 A. A. D. Eubanks.

Q. By whom are you employed?

A. Shell Union Oil Corporation.

Q. Where is your office located?

A. The district office is in the First National Bank Building in Charlotte.

Q. Here in Charlotte?

A. Yes.

Q. How long have you been connected with this Charlotte office?

A. Nearly six years.

Q. What are your duties with the Shell Union Oil Company?

A. My title is Division Transportation Supervisor. In that capacity, I have jurisdiction over all transportation.

Q. In your territory?

A. In North Carolina and South Carolina and Danville, Virginia.

Q. Prior to June 1, 1935, have you had occasion to use the services of Mauney Transfer Company in transporting your company's products?

A. Yes.

Q. Where did this business originate?

A. It originated at Sewarren, New Jersey.

Q. What did it consist of?

A. Petroleum products.

Q. Did he bring that down here in tank trucks, in bulk, or
174 in packages?

A. In packages.

Q. You say "petroleum products"; do you say the things an oil company usually handles?

A. Packages, boxes, drums, and cans.

Q. Lubricating oils and greases?

A. Yes; lubricating oils and greases.

Q. Can you recall about the time that you first employed the services of Mauney Transfer?

A. It was either the latter part of 1933, and I am positive 1934. I don't remember whether we did employ them in 1933 or not.

Q. Have they continued to transport for you from time to time as business conditions required since then?

A. Yes.

Q. Can you tell us something prior to June 1, 1935, about the destinations that were served, as you recall them?

A. As well as I remember, I don't recall the representative's name of the Mauney Transfer Company, but they did submit to me a scale of rates which our company requires. We always require some set scale of rates which we shall pay for their services. I do remember that they submitted me this schedule, showing a rate of 40 cents per hundredweight to points in North Carolina,
north of a certain line. I don't recall whether it was Char-
175 lotte, but I think it was Charlotte. Salisbury, and more or less in that general direction, and south of that line, they quoted a rate of 45 cents per hundredweight. I do recall that.

Q. That was when you first employed them?

A. Yes.

Q. Did this schedule of rates that you speak of apply to a great many points in North and South Carolina or only a few points?

A. As I remember it, it was to apply to all points. I am not positive of that.

Q. Were these points named in this schedule or rates, as you recall it, or just a proposition by territory?

A. I don't remember. All I do remember is that they did have a rate of 40 cents per hundredweight north of a certain line; I don't remember whether they listed the points or not.

Q. And they had a different rate south of that line?

A. Yes.

Q. Did that 45 cents rate apply on over into South Carolina as well?

A. Yes.

Q. Can you name some definite point, if you can recall, to which they transported your commodities, if you can recall?

A. I am not positive. I know they have hauled a good many shipments for us, but I am not positive to what points they did haul. I know they did haul to Charlotte.

176 Q. You mean that you are not positive as to all the points that he hauled?

A. Yes. I know they did haul a good many, but I am not positive as to each particular point, except I do know they hauled to Charlotte. Possibly Hickory, Salisbury, Lincolnton, Greensboro, Danville, Virginia, Florence, South Carolina, possibly Spartanburg, South Carolina, and Greenville, South Carolina. There could possibly be more points they hauled to but I just don't recall which ones.

The EXAMINER. Was that all from Sewarren, New Jersey?

The WITNESS. Possibly.

The EXAMINER. Did they haul empties back?

The WITNESS. They may, but I just don't recall. I don't think they did, but I am not positive about it.

By Mr. RICHARDSON:

Q. In soliciting business from you, did Mauney Transfer Company send a man to you and ask for this business, or did you call them?

A. They solicited the business, and of course, we gave them trial shipments which proved satisfactory, and since then, they have been hauling continually for us.

Q. Did they in solicitation, did they lead you to believe they would serve all these points north and south of this line that you mentioned a while ago?

A. Yes.

Q. Just as you had shipments developing to those points?

177 A. Yes.

Q. Can you tell us whether or not the number of points has increased from time to time that you do call on them to serve as business conditions require?

A. Yes. It has increased, I feel sure.

Q. Did you feel free to call on them to serve any points here in your territory that you may have had shipments going to?

A. Yes.

Q. Has the Carolina Freight Carriers Corporation been serving your company, too, since the name was changed?

A. Yes.

Q. Was it your understanding that Mauney Transfer Company was changed over to the Carolina Freight Carriers Corporation?

A. Yes; it is my understanding.

Mr. RICHARDSON. That is all.

Cross-examination by Mr. TOXEY:

Q. Did the Mauney Transfer Company serve any points prior to June 1, 1935, that were not served by other trucking companies to which you shipped?

A. At that time, I just don't recall whether they did or not, but I do know that the Mauney Transfer Company was one of the first trucking companies that we did use. We could have used at that time either Mauney Transfer or one of the other trucking concerns. I don't know which one started for us first.

178 Q. With the exception of Charlotte then, you can't definitely state that the Mauney Transfer transported traffic to any particular point in which you were interested prior or on June 1, 1935?

A. I can definitely state that I know that they hauled to points other than Charlotte, but I don't recall exactly what points they were by name.

Q. Would that be in North Carolina or South Carolina or both?

A. Both.

Q. You have very positive recollection of that?

A. Yes.

Q. Yet you don't know what points they transported traffic to for your company?

A. I don't recall. I don't want to say definitely, because I know that they did haul to possibly all the points, but rather than say any definite point that they may have missed and they might not have hauled to some point that I might mention.

Q. There was a possibility that the other trucking company transported to these additional points in North Carolina and South Carolina and not the Mauney Transfer, is that correct?

A. Well, I used them all naturally.

Q. When did you start using them in that manner?

A. It was either the latter part of 1933 or some time in 1934 that I started using them.

179 Q. Did you deal directly with Mauney Transfer Company or with some broker.

A. No. Directly through the Mauney Transfer.

Q. Did they perform the transportation from points or origin to destination?

A. As far as I know, they did. I am in the office there, and of course, I never did see any equipment whatsoever. All that I know is that they rendered invoices and we paid them and such forms as we had, they signed as receiving the goods.

Q. Has anyone made any effort to secure from your files a record of the shipments that moved on or prior to June 1, 1935? I am talking about shipments of the Mauney Transfer.

A. I don't recall. I have had a number of companies call on me for that information, but it was so unhandy for me to find those records, especially in a small office. We don't keep them. We had either sent them to our head office to be kept, but I felt that they had so much to do up there, that I didn't call on them for it.

Q. Do I understand from that the records would be destroyed?

A. Possibly we would. I don't know.

Mr. TOXEY. That is all.

The EXAMINER. Have Carolina Freight Carriers Corporation transported for you since their organization?

The WITNESS. Yes, sir.

The EXAMINER. Refreshing your memory regarding certain testimony that you gave in another case, No. MC 3619 Sub 1, application of Ratliff and Ratliff, here is that case *that case*, and I recall your testimony. If I am not right, correct me. You stated that as to points in North Carolina and South Carolina, east of U. S. highway No. 29, you had but three carriers whom you were using and upon whom you could depend for your service. They were, namely, McLean Trucking Company, Ratliff and Ratliff, and, I believe, Kelly of Sumter or Florence?

180

The WITNESS. Yes, sir; that is correct.

The EXAMINER. From that testimony, am I to understand that the carriage which Carolina Freight Carriers Corporation is performing for your company at the present and in the recent past has been only to the points on U. S. Highway No. 29 or west thereof?

The WITNESS. We have only been using Ratliff and Ratliff, also Kelly and McLean. We just started using those, I think I said, about two years ago, possibly. Prior to that time, we used the Mauney Transfer Company and other trucking concern almost just those two trucking companies altogether, and they did haul all over North and South Carolina at that time.

The EXAMINER. I mean in the recent past.

The WITNESS. In the recent past, when I find it necessary, which does occur at times, these other trucking concerns may be overloaded, and I do have to get shipments out right on the spur of the moment, so I call on various ones to see whether they can get a truck out just when I want it.

181

The EXAMINER. Have you recently used Carolina Freight Carriers Corporation for points east of U. S. highway No. 29, if you can remember?

The WITNESS. I recently gave them a load to Durham, Burlington, and Greensboro. I think they are east of that line.

The EXAMINER. They are all except Greensboro. Durham and Burlington are.

I merely want to get this straight as to which testimony I can rely on. It happens in the same day, and in one testimony to the effect that you need the service of a carrier, Ratliff and Ratliff, by reason of the fact you are shipping in the same territory which he wants to serve, of only two dependable motor carriers, neither of which was named as the Carolina Freight Carriers Corporation.

I want to understand clearly now what the situation is.

The WITNESS. We were shipping practically everything by rail, or possibly all of it as far as I can remember up until the time we did start using Mauney Transfer and this other trucking concern which is the G & M Motor Transfer Company in Statesville. We used those two trucking concerns and rail practically altogether.

Since most of our depots and distributors began asking for
182 trucking shipments, naturally I had to get more trucking concerns, which brought in Ratliff and Ratliff, McLean and Kelly.

The EXAMINER. But you still are using Carolina Freight Carriers Corporation to some extent?

The WITNESS. To some extent, but slightly in that section.

The EXAMINER. You are using them west of 29 and points on No. 29?

The WITNESS. West principally, on and west. I always try to give Carolina Freight Carriers points.

The EXAMINER. In their home territory?

The WITNESS. That is right.

The EXAMINER. Territory around Cherryville, is that right?

The WITNESS. But I have always used them over both states.

The EXAMINER. Have they ever refused to haul any shipment for you?

The WITNESS. No.

By Mr. TOXEY:

Q. Did that same condition exist on and before June 1, 1935, your transportation that the Carolina Freight Carriers performed for you, is that on and west of U. S. highway No. 29?

A. I don't believe I quite get your question.

Q. I mean is this operation you are now having performed for you, has that been continued since you first started with the predecessor in interest, the Mauney Transfer Company?

183 A. I have got the headache. I am sorry.

Q. Was the Mauney Transfer Company and the present company, Carolina Freight Carriers Corporation hauling over more territory now that they were in 1935?

A. No, they are not hauling over more territory now. We have increased their tonnage by giving them more points on and west of U. S. 21.

Q. Are they hauling to substantially more points than they were in 1935?

A. I have taken most of those points east away from them, and they are hauling west of that line as they did before.

Mr. TOXEY. That is all.

Redirect examination by Mr. RICHARDSON:

Q. Would you feel free to call on Carolina Freight Carriers at this time to serve you east of highway No. 29, if you have business going down there?

A. If I had a reason to call them, I would.

Q. Would you expect them to move your business to those places if and when you called them?

A. Yes.

Mr. RICHARDSON. That is all.

The EXAMINER. Are there any further questions?

Mr. TOXEY. No.

The EXAMINER. All Right.

(Witness excused.)

184 The EXAMINER. Exhibit No. 3, which is a statement identified and testified to by the Witness Griffis will be received in evidence.

(Exhibit No. 3, Witness Griffis, was received in evidence.)

WEBB DELLINGER was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. What is your name?

A. Webb Dellinger.

Q. You are employed at the present time by the Carolina Freight Carriers Corporation at Cherryville?

A. No, sir, not at the present time.

Q. Were you employed by the Mauney Transfer Company of Cherryville at any time?

A. Yes, sir.

Q. Will you tell us what period of time, that is beginning when you began work for them and when you quit?

A. I began work with Mauney Transfer Company in March of 1931.

Q. What was your position?

A. Driving a truck.

Q. As truck driver, how long did you work for them?

A. I worked for them on up until Carolina Freight Carriers was formed, up until about two months ago.

Q. During the period prior to June 1, 1935, Mr. Dellinger, if you can recall, tell us something about the commodities
185 which you transported on the trucks you were driving.

and the name of the commodity, point of origin, and points of destination.

A. Well, I hauled cotton mill products and cotton yarn and things manufactured in cotton mills.

Q. Where did you haul them from and to?

A. From Gastonia, North Carolina, to Baltimore, Maryland; Elk Mills, Maryland; Philadelphia, Chester, and Reading, Pennsylvania; Pottstown, on up as far as Hazelton, Wilkes-Barre, Scranton, and New Jersey to Riverside, Trenton, Bound Brook, Newark, Jersey City, Passaic, Paterson, into New York City, and up into the New England states, Bridgeport, Connecticut; New Haven, Providence and Pawtucket, Rhode Island, into Boston, Massachusetts; Worcester, and from Cherryville and Lincolnton, Belmont, North Carolina, Clover, South Carolina, to practically all the same points that I mentioned and from Gastonia.

Q. Points in the same states and those in the vicinity?

A. Y

Q. Did you transport any of those cotton mill products to Delaware points?

A. Wilmington, Delaware.

Q. Did you transport any in Virginia, that you recall?

A. No, sir, not that I recall.

Q. And other states?

186 A. Not as I recall, I didn't.

Q. You don't recall any?

A. No.

The EXAMINER. Before you go on, what kind of cotton factory products were those—yarn?

By Mr. RICHARDSON:

Q. Can you name what you hauled?

A. Yarn, and other things manufactured by a cotton mill.

The EXAMINER. Did you haul any piece goods?

The WITNESS. Yes, sir.

By Mr. RICHARDSON:

Q. Where did that come from?

A. I got some out of Gastonia, I think, the best I can remember.

Q. You didn't get any of that at Cherryville and these other places?

A. Those other places don't make it.

Q. Most of the piece goods were out of Gastonia?

A. I think that is where we got ours, but I am not positively certain. We hauled McLarin tires out of Charlotte.

Q. Where did they go?

A. They went to New York City; Boston, Massachusetts, and Lawrence, Massachusetts.

Q. Was it being moved from mill site to mill site?

Q. What other commodities, if any?

A. I hauled asbestos products to Philadelphia.

Q. What did they originate?

A. Charlotte, Southern Asbestos to Philadelphia, and
187 North Wales, Pennsylvania; Trenton, New Jersey; Newark, Passaic, Paterson, New York City; Middletown, Connecticut; Providence, and Pawtucket, Rhode Island; Boston, Massachusetts, and Hudson, Massachusetts.

Q. Any other commodity? Do you recall anything else that you hauled from North Carolina?

A. I hauled textile machinery.

Q. Where did you haul that from?

A. Out of Altavista, Virginia, to Lincolnton, North Carolina, and I hauled machinery from Salisbury, North Carolina, into South Carolina, Rock Hill. We hauled machinery from Kershaw, South Carolina, to Cherryville, North Carolina.

Q. About this machinery that you are talking about, did that machinery come out of mills—was it used machinery, or do you know?

A. Sir?

Q. Was the machinery you are talking about used machinery or was it new?

A. This I am speaking about at this particular time was used machinery.

Q. Was it being moved from mill site to mill site?

A. That is right.

Q. Were these mill sites always in the town or sometimes located at a distance from the town?

A. Sometimes it was located out of town.

188 Q. Can you recall any particular town that would be illustrative of that?

A. Lincolnton—I hauled machinery from Altavista to Lincolnton, and the mill was outside of Lincolnton.

Q. About how many miles, would you say?

A. Between two or three miles.

Q. Do you recall anything else that you hauled during that period of time, Mr. Dellinger?

A. I hauled tire fabric from McColl, South Carolina, to Conshohocken, Pennsylvania.

Q. Anything else?

A. I hauled empty boxes with wire spools to put wire on from Charlotte to Perth Amboy, New Jersey, Harrison, New Jersey, and I believe that is all.

Q. Are there any other commodities that you recall northbound?

(No response.)

Q. What did your southbound movement consist of, if you can recall?

A. Well, we hauled petroleum products.

Q. Where did that originate?

A. From Sewarren, New Jersey, and from Marcus Hook, Pennsylvania.

Q. To what points?

A. To points in North Carolina and South Carolina: In North Carolina, Raleigh, Durham, Henderson, Burlington, Greensboro, Salisbury, Statesville, Hickory, Lincolnton, Charlotte, and
189 Rocky Mount. In South Carolina, Florence, Spartanburg, Greenville, and Columbia.

The EXAMINER. That was from Sewarren?

The WITNESS. From Sewarren and Marcus Hook, Pennsylvania.

By Mr. RICHARDSON:

Q. For whom did you haul from Marcus Hook?

A. Pure Oil Company.

Q. Were their distribution points the same as those of Shell?

A. No, not all of them. They are not exactly the same.

Q. Do you recall any other commodities that you transported southbound?

A. Well, we hauled rugs.

Q. Where did they originate, and where did they go to?

A. Out of East Walpole, Massachusetts.

Q. To where?

A. To Asheville, Charlotte, Goldsboro, High Point, Greensboro, and to Spartanburg and Greenville.

Q. South Carolina?

A. Yes, and as well as I remember, I went into Anderson, but I am not positive of that.

We hauled rugs out of Paulsboro, New Jersey, to Monroe, North Carolina, and we also hauled rugs out of Marcus Hook, Pennsylvania.

Q. Whom were they for—what points?

A. Charlotte and Goldsboro and High Point, and also to
190 Spartanburg and Greenville, South Carolina.

Q. What other commodities, if you recall any others?

A. I hauled brass wire.

Q. Brass wire?

A. Brass wire.

Q. From where?

A. Perth Amboy, New Jersey, and Harrison, New Jersey, to Charlotte, North Carolina.

Q. Do you recall any other commodities or any other points on that commodity?

A. No, I don't.

Q. Are there any other commodities that you moved southbound and from where?

A. Chemicals.

Q. Where did they originate?

A. New York, Brooklyn, Woodbridge, New Jersey, and also Camden, New Jersey, to Kannapolis, North Carolina, and Abbeville, South Carolina.

Q. Is that all about the chemicals?

A. I believe it is.

Q. Can you recall any other commodities?

A. I hauled beer.

Q. Where did that originate?

A. Out of Newark, New Jersey.

Q. To where?

191 A. Baltimore, Maryland; Gastonia, Wadesboro, Hickory, North Carolina.

Q. Are there any others that you can recall—did you ever haul any beer to South Carolina?

A. I don't think I did, not on the truck that I drove.

Q. Are there any other commodities that you recall?

A. I hauled batteries.

Q. Where did they originate and where did they go?

A. Out of Jersey City, New Jersey, to Richmond, Virginia; Raleigh, North Carolina; and Monroe, North Carolina.

We hauled canned goods out of Baltimore, Swedesboro, New Jersey, and Inwood, West Virginia, to Charlotte, Albemarle, and Sanford, North Carolina.

I hauled cocoa out of New York City to Charlotte, North Carolina.

Q. Anything else?

A. Wire cloth out of York, Pennsylvania, to Monroe, North Carolina.

Q. From where else did you haul wire cloth?

A. That is all.

Q. Any other commodities?

A. We hauled hardware out of Baltimore, Maryland, to Monroe, North Carolina, and also shotgun shells out of Bridgeport, Connecticut, and New Haven to Charlotte, North Carolina.

Q. Is there anything else that you recall?

192 A. I hauled roofing out of York, Pennsylvania, to Lincolnton, Charlotte, Forest City, Gibsonville, North Carolina.

Q. Are there any other commodities, or any other points on that commodity

A. I believe not.

Q. Do you recall any other commodities that you transported out of Maryland, Pennsylvania, or some other state? Did you bring back any of those empty warp rolls from those mills up there?

A. I hauled empty warp rolls, as you call them, from Philadelphia and Chester, Pennsylvania, to Gastonia, Cherryville, Canton, Belmont, Thomasville, and Albemarle.

I hauled nails and baling wire out of Sparrows Point, Maryland, to Charlotte, Shelby, and that is all I can remember on that.

Q. Is there any other commodity that you recall from any point or to any point?

A. I think that is all I can recall right now.

Q. Mr. Dellinger, during the time you were employed with Mauney Transfer, who paid you your salary?

A. The manager of Mauney Transfer.

Q. Did you take your orders from the management of Mauney Transfer Company at all times?

A. Yes, sir.

Q. Did Mauney Transfer Company tell you when to take
193 your truck, and where to go with it?

A. Yes, sir.

Q. Did Mauney Transfer advance to you expense money to defray the expenses on these trips you were making?

A. Yes, sir.

Q. Take a trip that you transported some of those cotton factory products that you mentioned up into Pennsylvania and New Jersey, and you found yourself without a return load. Whom did you report to in a case of that kind?

A. I reported to Mauney Transfer Company in Cherryville, the manager.

Q. Did they advise you what to do in those cases?

A. Yes, sir.

Q. With regard to these cotton factory product you testiged to, Mr. Dellinger, did you always receive those from one mill in a truckload quantity going to some other mill or some other consumer in that same truckload quantity?

A. Not very often, we seldom got a truckload from one mill. We would usually get it from several mills, maybe six, to eight or ten.

Q. How would you assemble it then, would you go around to these mills and pick it up, or did you bring it into your warehouse and assemble it—what happened in cases of that type?

A. I pulled it into the warehouse, and unloaded the trucks, and went out from there.

194 Q. Did you find yourself with truckloads going to one destination?

A. Not very often did we have a truckload going to one destination. They would be going to different places.

Q. Wouldn't you say that there were three or four destinations represented on a truck load, or what you *you* say about that?

A. I would say I have had as high as fifteen.

Q. From that on down to one?

A. That is right.

Q. In operating the trucks that you drove, did you go over the highway best suited for these loads being distributed off the truck?

A. Yes, sir.

Q. Did you put those loads off at the intermediate points as you would come along to them wherever they were destined?

A. That is right.

Q. With respect to asbestos products that you mentioned, did you always get those in truckload quantities or did you have some mixed loads?

A. Not all the time, I didn't.

Q. Will you tell us what kind of load you did have in cases that were not truckloads?

A. Sometimes we had a part load of asbestos and maybe a part load of something else. We could always get asbestos to deliver in Philadelphia, North Wales, Trenton, and New York

195 City.

Q. Do you mean all on the same truck?

A. Yes, sir; and probably I would get a load going up to Middletown, part of it, and then go on into Providence and Pawtucket, and Hudson, Massachusetts.

Q. Was it your instructions to pull these various shipments off at the point you were told to put them off, when you got the shipment?

A. Yes.

Q. With regard to the shipments you were transporting southbound, did you always receive those in truckload quantities?

A. No, sir; not all the time.

Q. Will you tell us something of how you proceeded to operate when you didn't get it in truckload quantities?

A. I would pick up a load for a couple of different towns or three, and deliver it as I came down.

Q. You said something about batteries coming down to be delivered at Richmond, Raleigh, and maybe some other point; was that on one trip that you found yourself with those different shipments?

A. I have delivered in Richmond, Raleigh, and Monroe, all on the same trip.

Q. Did you ever get any batteries down in truckload quantities to be put out at the same place, that you recall?

A. I don't recall.

196 The EXAMINER. When did you last haul any batteries?

The WITNESS. Sir?

The EXAMINER. When was the last load of batteries that you ever hauled down?

The WITNESS. Do you mean the last load of batteries?

The EXAMINER. Yes.

The WITNESS. I couldn't say exactly the date. It has not been so long ago that I moved a load from Philadelphia to Winston-Salem.

The EXAMINER. About what date?

The WITNESS. About three months ago.

The EXAMINER. Would you say it was before July 1, or since July 1?

The WITNESS. That I hauled batteries?

The EXAMINER. Yes.

The WITNESS. I hauled batteries before July 1.

The EXAMINER. I mean the last load—was that before July 1 or since July 1?

The WITNESS. It has not been over three months ago since I hauled batteries.

The EXAMINER. Since July 1, is that right?

The WITNESS. Do you mean this past July 1?

The EXAMINER. Yes.

The WITNESS. It was around about July 1, or something like that.

197 By Mr. RICHARDSON:

Q. With respect to other commodities, Mr. Dellinger, that you transported, tell us whether you got them in truckloads, and if you didn't, than what was your procedure; and if you did get them in truckloads, tell us about what your deliveries were.

A. Well, we would maybe pick up a truckload at one place up there that was maybe going to three or four different places down here.

Q. Take, for instance, rugs and canned goods; you pick up a load of those and then distribute them down here to places to be designated, is that right?

A. That is right.

Q. Tell us about something; you said you didn't get everything in truckloads, and you found yourself up there without a truckload or with only a part of a truckload. Tell us what your procedure was, if you found yourself that way?

A. Well, we would pick up a load of something else to finish out.

Q. Can you describe the situation of that type, Mr. Dellinger?

A. Well, I would pick up part of a load of rugs maybe to finish out the load and maybe some beer to bring down and deliver to different places.

Q. Can you give us any specific instance where you had part of a shipment of anything prior to June 1, 1935, on your truck, and then finished filling the load out at some other
198 point, if you can recall?

A. Yes, sir. I remember one very well.

Q. Can you tell us about it?

A. I brought down—I picked up batteries in Jersey City, and coming on down to Paulsboro, New Jersey, I finished it out with a load of rugs.

Q. You finished your load out with rugs?

A. That is right. I brought it to Monroe and Raleigh.

Q. Was that transaction prior to June 1, 1935?

A. Yes, sir. It was in 1933.

Q. Was it your instructions from you company to transport those shipments as you would find yourself in those conditions like you have described?

A. Yes, sir.

Q. And to haul them to whatever point they were consigned to back and forth in the territory you were operating in?

A. That is right.

Mr. RICHARDSON. That is all.

Cross-examination by Mr. TOXEY:

Q. Mr. Dellinger, how many trucks did the Mauney Transfer Company operate when you first went with them in 1931?

A. When they first started operating, they had three. That was when they first started operating.

Q. I am speaking of the time when you first went with them.

199 A. They had three. I started when they started.

Q. How many truck did they have in operation on June 1, 1935, do you remember?

A. I wouldn't say exactly how many they had, but I would say that they had as many as eight. I don't say that would be exact.

Q. You continued to haul for this concern as long as they were in business, and then with the Carolina Freight Carriers when they took over the Mauney Transfer Company business?

A. Yes.

Q. Up until two months ago?

A. Something like that.

Q. All the shipments you mentioned that you had handled on your truck, the various commodities to and from various points, was that all performed on or prior to June 1, 1935?

A. Yes, sir.

Q. After June 1, 1935, did you continue to make the same trips?

A. Practically the same, but not exactly the same.

Q. Did you cover any additional origins or destinations after June 1, 1935, that you didn't go to or from prior to that date?

A. As well as I remember, I didn't.

Q. You are positive that you made these trips with these commodities from and to these points prior to June 1, 1935

200 A. Yes, sir.

Q. Will you tell me when you first started to hauling tires from Charlotte to New York and Boston?

A. I don't recall the exact date of that. That has been quite a while back, and I don't recall that.

Q. How do you know you transported them prior to June 1, 1935?

A. I remember the model truck I was driving.

Q. Yet you don't recall the date that you transported them?

A. I don't recall the date that I started.

Q. Do you recall how many trips you made in a given length of time prior to June 1, 1935, say prior to June 1, 1935, from January 1, 1935?

A. Do you mean during that six months?

Q. Yes.

A. I can't.

Q. Or any period that you can remember in which you hauled a certain number of trips or made a certain number of trips prior to June 1, 1935?

A. I don't say I could tell how many trips I made, for that is hard to keep in mind.

Q. Did you make a dozen or less?

A. I just wouldn't say. I wouldn't want to make a statement like that. I might make one that wouldn't be true, because that is hard to remember.

The EXAMINER. It is no harder to remember than these

201 other things that you testified to, are they, Mr. Dellinger?

The WITNESS. I think it would be kind of hard to say how many trips you had made.

By Mr. TOXEY:

Q. How is that you remember you hauled these commodities on your truck prior to June 1, 1935, yet you don't remember how many trips or when you transported them?

A. I know I hauled tires as early as 1933. I know that.

Q. You don't recall how many trips you made from 1933 to June 1, 1935?

A. No. I couldn't say how many trips I made.

Q. You are sure you hauled rugs from destination to North Carolina points prior to June 1, 1935?

A. Yes.

Q. When did you start hauling that?

A. I hauled rugs in—I believe it was the latter part of 1933, or right at the first part of 1934.

Q. How do you fix that as the time you started it?

A. How did I remember that?

Q. Yes.

A. I remember what model truck I was driving.

Q. Is that how you remembered all these things you listed—by the model of the truck?

A. Not all of them.

Q. That is how you remember the rugs, by the model of the trucks?

202 A. I remember it was in March when I hauled one load.

Q. Could it have been subsequent to June 1, 1935, when you started as well as prior?

A. Do you mean after June?

Q. Yes.

A. No. It was not after June 1, 1935.

Q. How about the batteries, when did you first start hauling batteries?

A. We hauled batteries as early as the first part of 1933.

Q. You say, "We hauled batteries." Did you haul them?

A. Yes, sir. I hauled batteries.

Q. In your truck?

A. Yes, sir.

Q. How many trips did you make with batteries from Jersey City to Richmond, Raleigh, and Monroe, prior to June 1, 1935?

A. I think that is a might' hard question for anybody to answer.

Q. If you remember transporting them, it seems to me you ought to have some estimate as to how many trips you made.

A. I might say five, and that wouldn't be right.

Q. What I want to know is how do you know that you did haul them prior to June 1, 1935, if you don't recall when you started or how many trips you made. Just what fixes it so definitely in your mind that you did haul them prior to June 1, 1935?

203 A. I had no way of keeping any record of how many trips I made.

Q. You know that you hauled them?

A. Sure, I know that I hauled them.

Q. The same thing is true of all these other commodities then, is it not?

A. I am sure.

Q. You don't recall when you started, or how many trips you made prior to June 1, 1935?

A. I started to work for the Mauney Transfer Company in 1931. We started out hauling cotton products, and later on they took on these other commodities.

Q. What did you haul principally in your territory in your truck?

A. I hauled to the town that I just mentioned.

Q. What was the principal commodity?

A. Did you say what was the principal commodity?

Q. You handled some certain given commodity more than you handled other—what was that?

A. What do you mean—in my truck?

Q. Yes.

A. I wouldn't say. Lots of times I would go up and have three or four different commodities on the truck.

Q. Do I understand from that you hauled cotton goods, shells, and roofing as much as you hauled yarn?

204 A. I wouldn't say that; no.

Q. What would you say?

A. I would say I hauled more yarn that I did shells.

Q. That is what I wanted to know, what you hauled principally in your truck?

A. I didn't haul any yarn down this way. I hauled yarn that way, and the shells south.

Q. When did you first make the trip to South Carolina with any commodity?

A. Do you mean any commodity out of North Carolina?

Q. Out of anywhere. When did you first go to South Carolina with a truck of Mauney Transfer Company?

A. I would say around 1932.

Q. Why would you say 1932? Do you recall very specifically that you did make a trip?

A. To the best of my recollection, it was around 1932.

The Examiner. Where to in South Carolina?

The Witness. I hauled machinery down to Rock Hill.

By Mr. Toxey:

Q. Are you positive that you hauled machinery to Rock Hill in 1932?

A. I am pretty sure we did.

Q. But you couldn't make a positive statement that you hauled it down there in 1932?

A. Well, we hauled so much machinery that it is hard to remember all the places that we did haul it and the exact date.

205 Q. In other words, all of these movements you referred to are just based on your general memory?

A. Well, I didn't keep any daily record of it.

Q. I am trying to develop why you feel so sure that you hauled them prior to June 1, 1935, and not after that date. Your memory seems to be pretty clear as to what you hauled, but you don't know how many trips you made or the points you went to prior to that date.

(No response.)

Mr. TOXEY. That is all.

The EXAMINER. When did you last haul any tires from Charlotte to any norther' points?

The WITNESS. I don't recall when that plant shut down. It was just before McLarin Tire Plant shut down in Charlotte.

The EXAMINER. What year was that?

The WITNESS. Didn't they shut down in 1934 or the latter part of 1933?

The EXAMINER. Before the Mauney Transfer Company went out of business in that name—I would ask it this way—you worked for the Mauney Transfer Company as long as they operated, did you?

The WITNESS. Yes, sir.

The EXAMINER. And that was sometime along about the fall of 1936 or the spring of 1937, was it?

206 The WITNESS. As well as I remember, it was the fall of 1936.

The EXAMINER. But after Mr. Beam, the two Mr. Beams, took it over, it still ran for a while in the name of Mauney Transfer Company, did it, up until th' spring of 1937?

The WITNESS. That is right.

The EXAMINER. With reference to the operation in the name of Mauney Transfer, when was the last trip that you ever made with the Mauney truck to Boston?

The WITNESS. I made trips up there in 1935.

The EXAMINER. In 1935?

The WITNESS. Yes.

The EXAMINER. You didn't make any in 1936, did you, into Boston, Walpole, or whatever that place is where you got the rugs?

The WITNESS. Yes, I think I did. I think I made some trips up there in 1936.

The EXAMINER. When was the last time you ever went up to Boston?

The WITNESS. The last time?

The EXAMINER. Yes.

The WITNESS. Well, the last time that I made a trip for Carolina Freight Carriers was my last trip up there.

The EXAMINER. That was this year?

The WITNESS. That was not Boston. That was up in Connecticut and Rhode Island.

207 The EXAMINER. That was two months ago approximately?

The WITNESS. Something like that, but I won't say exactly how long it has been. I know it has not been over two months, and maybe not quite two months.

The EXAMINER. What did you have that time to unload?

The WITNESS. On that truck going up?

The EXAMINER. Yes.

The WITNESS. Piece goods.

The EXAMINER. Cotton piece goods?

The WITNESS. Yes.

The EXAMINER. From where?

The WITNESS. I don't recall where it was, but I think some of it was from Charlotte.

The EXAMINER. Try to go back to that period from January 1, 1936, to March 1937; tell me how many times you went to Boston during that period while you still had Mauney's name on the truck.

The WITNESS. As well as I remember, to that exact date, I think that I was driving a truck up there about every week right them, as well as I recall.

The EXAMINER. During 1936 and 1937?

The WITNESS. 1936 and the spring of 1937. As well as I remember it, that is the way it was.

The EXAMINER. About once a week?

The WITNESS. I was driving a straight truck job, not
208 tractor-trailer.

The EXAMINER. What tonnage did that carry?

The WITNESS. Around five, five and a half, or six tons.

The EXAMINER. Yarn?

The WITNESS. It was mostly yarn going up.

The EXAMINER. What would you have back from there?

The WITNESS. I would bring down petroleum products.

The EXAMINER. You wouldn't pick those up until you got back to Sewarren?

The WITNESS. I would pick those up at Sewarren.

The EXAMINER. You would run light from Boston or whatever your destination was up there, back to Sewarren and Marcus Hook?

The WITNESS. Yes, sir; or New York. I would pick up something in New York probably or Newark, New Jersey.

The EXAMINER. Do you know what the rate was on the yarn that was going out?

The WITNESS. No, sir; I couldn't tell you that.

The EXAMINER. You would go from around Gastonia or somewhere with that—is that where you started from?

The WITNESS. Yes.

The EXAMINER. You would carry about five or six tons up to Boston?

The WITNESS. Around five and a half to six tons.

The EXAMINER. How soon after you were carrying these
209 loads did the Mauney Transfer Company go out of business or sell out their stock?

The WITNESS. The time I am speaking of was after Mauney sold out to Beam.

The EXAMINER. It was after Carolina Freight Carriers took over?

The WITNESS. It was while it was operated under Mauney's name.

The EXAMINER. Operated by Mr. Beam?

The WITNESS. That is right.

The EXAMINER. How about the time—say for six months prior to Mr. Beam's coming to the Mauney Transfer Company—were you driving up to New England during that period if any?

The WITNESS. Yes, sir. We made some trips up there.

The EXAMINER. How frequently?

The WITNESS. Well, I didn't make them all. The other drivers made some. I would maybe make one a month or maybe two.

The EXAMINER. What kind of truck were you driving then?

The WITNESS. Well, I drove a GMC truck; a trailer part of the time; and another kind of truck and trailer.

The EXAMINER. Did you ever have any trouble with the Commission up there in Massachusetts?

The WITNESS. No, sir.

The EXAMINER. Connecticut?

210 The WITNESS. No, sir.

The EXAMINER. Rhode Island?

The WITNESS. No, sir.

The EXAMINER. Did you have a license on your truck except a Carolina license?

The WITNESS. No, sir.

The EXAMINER. You just had North Carolina license?

The WITNESS. North Carolina license. The only trouble I had was with the police. They would stop me to measure the length of the truck and the width, and to see if the lights and all were working all right on it.

The EXAMINER. Did they ask you about your insurance?

The WITNESS. Yes, sir.

The EXAMINER. How many loads of rugs did you haul back in the year 1937 from Massachusetts?

The WITNESS. 1937?

The EXAMINER. That was in the last year, the year before this one.

The WITNESS. I would say something like about three or four or probably five.

The EXAMINER. Where did they come to—Monroe?

The WITNESS. No. Charlotte, High Point, and as well as I can recall, *a*huled some to Greenville, South Carolina.

The EXAMINER. That was during this last year, the year before this?

211 The WITNESS. Yes, sir.

The EXAMINER. How long did it take you to make the trip up to Boston and back from Gastonia?

The WITNESS. How long did it take me to go up there and back?

The EXAMINER. Yes; when you are loaded both ways.

The WITNESS. Well, I would leave home on Saturday night, go up and load, and come right straight back. I would get home early Wednesday morning.

The EXAMINER. That was in the year 1934 and 1935?

The WITNESS. Yes, sir.

The EXAMINER. How about the year 1932, how long would it take you?

The WITNESS. I don't think I said that I went up there in 1932.

The EXAMINER. 1933?

The WITNESS. Yes; I went up there in 1933.

The EXAMINER. How long did it take you then?

The WITNESS. Practically the same time that I just stated; that is, if I didn't have any trouble or anything, you know.

The EXAMINER. What was the name of the shipper of these rugs in 1934 and 1935?

The WITNESS. Sir!

The EXAMINER. What was the name of the shipper of these rugs—what company did you get them from in 1934 and 1935?

212 The WITNESS. Do you mean up there in Massachusetts?

The EXAMINER. Yes, sir.

The WITNESS. Byrd and Sons, East Walpole.

The EXAMINER. What was the name of the consignee of those rugs in Greenville?

The WITNESS. In 1934 and 1935?

The EXAMINER. Yes.

The WITNESS. As well as I can remember, it was Glasgow and Allison.

Mr. RICHARDSON. Glasgow "dash" Allison.
The EXAMINER. Whom did you haul them to in High Point?
The WITNESS. Glasgow-Allison.
The EXAMINER. The same people?
The WITNESS. Yes.
The EXAMINER. To the same people at all the destination points?
The WITNESS. I hauled rugs to Asheville, North Carolina, to the North State Supply Company, I believe that was the name of it, but I am not positively certain that is right. I know it was North State Supply Company, or something like that.
The EXAMINER. Where are you working now, Mr. Dellinger?
The WITNESS. I am working at Cherryville.
The EXAMINER. Are you in the trucking business there?
The WITNESS. I am just driving a local truck there.
The EXAMINER. That is all I have.

213 Redirect examination by Mr. RICHARDSON:

Q. Mr. Dellinger, the truck that you drove while you were with the Mauney outfit, did that have the name of Mauney Transfer on it while you were driving it?
A. Yes, sir.
Q. That name was on the truck all during the regime of the Mauney operations?
A. Yes, sir.
Mr. RICHARDSON. That is all.
The EXAMINER. All right.
(Witness excused.)

J. R. MAUNEY was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. What is your name?
A. J. R. Mauney.
Q. Were you connected with Mauney Transfer Company at Cherryville?
A. Yes, sir.
Q. What period of time did you work for them?
A. From about March of 1931 up until now.
Q. March 1931, up until now?
A. Yes.
Q. Do you mean that you are working for the successors in interest of Mauney Transfer at this time?
214 A. Yes.
Q. Carolina Freight Carriers Corporation?
A. Yes.

Q. What was your position with Mauney Transfer Company during the time you worked for that company as Mauney Transfer?

A. Truck driver.

Q. Prior to June 1, 1935, Mr. Mauney, can you recall what commodities you transported on the trucks you were driving for Mauney Transfer Company?

Start out, for example, with the commodities you transported north-bound, and let us know what your truck was loaded with, where you picked them up, and where you were going.

A. I loaded the cotton yarn from Cherryville to Chester, Pennsylvania, and Clifton Heights, Pennsylvania; and Paterson, Passaic, Perth Amboy, Jersey City, and New York City. From Marion, Lincolnton, Gastonia, Renlo, Kings Mountain, Long Shoals, and Salisbury, went to Pottsdown, Reading, Allentown, Pottsville, Hamburg, Schuylkill Haven, Linnfield, Phoenixville, Boyertown, West Leesport, Allentown, and Bethlehem.

That *si* all the points in Pennsylvania that I can recall.

Into New York City; Norwick, Connecticut, and Danielson, Connecticut; Northampton, Massachusetts; Franklin, Brockton, and Lowell; and in Rhode Island, Providence, Rhode Island, Pawtucket, and West Warwick.

That is all I can recall just offhand.

215 Q. Did you ever haul any to Delaware points?

A. Not that I recall.

We hauled automobile tires from Charlotte to Plainfield, Newark, New Jersey; and New York City.

Q. What other commodities?

A. I hauled asbestos products from Charlotte to Philsdelphia, Trenton, and North Wales.

Q. North Wales, Pennsylvania?

A. Yes.

I hauled bedspreads from Lincolnton to Washington, D. C., and Baltimore, Maryland.

Q. What else did you haul, if anything, northbound?

A. That is all I can recall right at the minute.

I hauled machinery from Raleigh to Cherryville and from Raleigh to Porterdale, Georgia, and from Alta Vista, Virginia, into Lincolnton, and from Huntersville at Charlotte.

Q. Huntersville, North Carolina?

A. Yes.

Q. Go ahead.

A. And from Raleigh to Rock Hill, South Carolina; and from Raleigh to Wellford, South Carolina.

Q. Is that all the machinery?

A. I hauled machinery from Randleman to Charlotte.

The EXAMINER. Where is Randleman?

The WITNESS. Randleman is about—it is out from Asheboro and Greensboro.

216 The EXAMINER. North Carolina?

The WITNESS. Yes.

By Mr. RICHARDSON:

Q. Do you recall any other machinery?

A. I hauled some motors and some kind of a machine, I can't say what kind, from New York into Ranlo, North Carolina.

I hauled cocoa from New York into Charlotte, and canned goods from Baltimore into Charlotte, and wire cloth from York, Pennsylvania, to Monroe, North Carolina.

The EXAMINER. What is wire cloth?

The WITNESS. Plain screen wire.

The EXAMINER. It is not wire cloth like asbestos?

The WITNESS. It is wire cloth in that it is cloth put on wire.

By Mr. RICHARDSON:

Q. Doesn't the railroad use that term on screen wire, wire cloth?

A. Yes.

I hauled rugs from Paulsboro, New Jersey, to Monroe, North Carolina.

I hauled batteries from Jersey City, New Jersey, to Richmond and to South Hill, Virginia, and Raleigh and Monroe, North Carolina.

I hauled—I guess you would call it general hardware, from Baltimore, Maryland, to Monroe, North Carolina.

217 I hauled linoleum rugs from Marcus Hook, Pennsylvania, to Charlotte.

I have hauled cotton yarn from Chester, Pennsylvania, to Cherryville, North Carolina.

I have hauled empty warp rolls from Chester, Pennsylvania, to Thomasville, Salisbury, Rockwell, Albemarle, Oakboro, Gastonia, and Cherryville, North Carolina; and Clover, South Carolina.

The EXAMINER. Is this all prior to June 1, 1935?

The WITNESS. Yes.

I hauled chemicals from Linden and Woodbridge, New Jersey, to Charlotte. I hauled chemicals from Woodbridge to Kannapolis.

I hauled oil from Sewarren, New Jersey, to Danville, Virginia, and Raleigh, Durham, Greensboro, Salisbury, Lincolnton, Hickory, Charlotte, Wilson, Asheville, Rocky Mount, Spring Hope, Lumberton, and Wilmington, North Carolina; and Greenville, South Carolina.

I hauled oil from Marcus Hook, Pennsylvania, to Greensboro, Charlotte in North Carolina, and Spartanburg and Greenville, South Carolina.

I hauled beer from Newark, New Jersey, to Hickory, North Carolina.

I hauled paper from New York City to Cramerton, North Carolina.

I hauled machinery from Philadelphia to Valdese, North
218 Carolina.

I hauled paper containers from Philadelphia to Clover, South Carolina.

I hauled cotton yarn from Pottstown, Pennsylvania, to Taylorsville, North Carolina.

I hauled roofing from York, Pennsylvania, to Charlotte and Lincolnton and Greensboro, North Carolina.

By Mr. RICHARDSON:

Q. Is that all you recall?

A. That is all I recall.

Q. When you first went with this company, as I understood you to testify, in 1931 or 1932, would you say that was toward the end of 1931 and the first of 1932?

A. I would say it was the latter part of 1931.

Q. Were you hauling cotton yarn on the truck you drove from a relatively few points down here to a relatively few points in Pennsylvania, New Jersey, or some destination up there?

A. Sometimes, yes; and sometimes, no.

Q. Right at the beginning, when you first started, did you have a lot of places up there that you delivered to?

A. Relatively at the beginning, we didn't.

Q. Where do you recall as being the first places that you did deliver yarn to when you first began hauling?

A. To the Aberfoyle Manufacturing Company and the Ewing-Thomas Corporation in Chester, Pennsylvania.

219 Q. Where did you get that yarn?

A. Right at the beginning, it originated at Cherryville, Gastonia, and Lincolnton.

Q. Just a few points?

A. That is right.

Q. As time went on, did you branch out, and go to additional points and destinations?

A. Yes, sir.

Q. Is the same thing true in regard to the origins you served—as time went on, did you begin to branch out to different and additional points that you picked up from?

A. That is right.

Q. Prior to June 1, 1935, from there on back to the time you began, did you get these textile products that you were hauling in truckload quantities for one destination at the other end?

A. Sometime, but not very often.

Q. Did you sometimes have two or three destination points to deliver to.

A. That is right.

Q. With one load?

A. That is right.

Q. Did you always get a full load from one mill at this end to be transported from that one mill to some point up there?

A. No, sir.

Q. Did you occasionally get a load like that?

220 A. Yes; occasionally.

Q. Back at the beginning, when you first started to hauling the cotton yarn, what would you get coming south after you would unload your yarn?

A. Well, right at the beginning, it was in some instances when we went back without anything, but it was not long until we got on to this warp roll shipment that was going back. The office told us to inquire about shipments coming back from Aberfoyle in Chester.

Q. Those warp rolls were what the yarn went up on?

A. That is right. It was what the yarn was rolled on or wound on.

Q. And between 1931 and the middle of 1935, June 1, 1935, some three years of time, did your company add to the commodities that they were transporting from time to time as the commodities were offered to you?

A. Yes, sir.

Q. Did you branch out from new points of origin and new points of destination that you served within this time?

A. Yes, sir.

Q. With regard to a shipment that you would get up in the east or southbound movements, did you always get a full truckload coming to one destination?

A. Not always.

Q. Did you part of the time?

221 A. Yes, sir.

Q. Did you find yourself occasionally with a truck load of merchandise to be delivered at several points?

A. Do you mean on the way in?

Q. Southbound business, after you unloaded in the north.

A. Do you mean would the southbound go to several different points?

Q. Did you find yourself with a load coming back from up there to be distributed to more than one point down here, two or more points?

A. Yes.

Q. Was it your instructions to deliver those shipments to two or more, however many points were designated by the shipper, as you come along?

A. That is right.

Q. Did you always have a full truck load to start out from one man's place of business up there?

A. No, sir.

Q. What would you do if you found yourself with only part of a load from one man's place of business?

A. As a usual thing, we knew what we were going to bring back before we left home.

Q. Where did you get that information from?

A. From the general manager of the Mauney Transfer Company.

Q. They would give you instructions before you left
222 here were to go to look for something to transport southbound?

A. That is right.

Q. If you didn't have instructions when you left here, what happened when you got up there and got unloaded?

A. They would wire some designated place up there. We would know beforehand where they were going to wire to.

Q. The office down here attended to the securing of business for the truck you were driving?

A. That is right.

Q. Did you ever pick up at more than one point up there in the east after you finished unloading before you got the truck loaded coming back this way?

A. Yes, sir.

Q. Will you describe such a shipment, such a situation, if you can recall one?

A. I picked up part of a load in New Jersey, part of a load of chemicals, and I came on to Camden and I picked up some more.

Q. Camden, New Jersey?

A. Yes.

Q. More chemicals?

A. Yes, and then I went on over into Philadelphia and picked up more chemicals and on the way in, I dropped part of them off in Burlington, and the balance of the load came to Charlotte.

Q. You put it off wherever the man designated that you
223 got it from, and you would unload it as you come down the road?

A. That is right.

Q. Mr. Mauney, you were speaking of the time prior to June 1, 1935, about hauling these commodities?

A. That is right.

Q. Since June 1, 1935, did your company continue operating in the manner that you have described so far as your truck driving was concerned?

A. Yes, sir.

Q. Are you still driving a truck for Mauney Transfer Company, or for the successor in interest to Mauney Transfer?

A. I am still working with them but I am not driving a truck.

Q. How long since you drove a truck?

A. Approximately two months.

Q. You are still working for them?

A. Yes, sir.

Q. During the time you drove a truck for the Mauney Transfer Company and its successor in interest, have the truck operations continued to be conducted in the manner you have described?

A. That is right as far as I know.

Q. I am talking about the truck you were driving.

A. Up until the time I got off the truck; yes.

Q. Did you continue to service additional points as you would get shipments for new points all along after June 1, 1935?

A. Whatever they had to put on my truck, it was up to
224 me to deliver it regardless of where it was going.

Q. You did confine your operations to certain territory when you were driving this truck. They didn't send you anywhere except the states you were operating in, or the points in the territory that you had been operating in over a period of years, did they?

A. No.

Q. During the time that Mauney Transfer was in existence, it was changed over to Carolina Freight Carriers Corporation, did the truck you drove have the name of Mauney Transfer Company painted on it?

A. Yes, sir.

Q. During that period of time, did you take your instructions from the officer of manager of the Mauney Transfer Company?

A. Yes, sir.

Q. Did they pay you your salary?

A. Yes, sir.

Q. Did they pay the expense on the truck that you were operating?

A. Yes, sir.

Q. I mean so far as your road expenses were concerned?

A. Yes, sir.

Q. If you had any trouble, did you report to the Mauney Transfer Company or somebody else?

A. I reported to Mauney.

The EXAMINER. Did you ever have any other name painted on the trailer in big letters on any truck that you drove?

225 The WITNESS. No, sir.

The EXAMINER. You never drove one that had Akers and Hudson on the side of it?

The WITNESS. No, sir.

Mr. RICHARDSON. That is all I have.

The EXAMINER. All right.

Cross-examination by Mr. TOXEY:

Q. Mr. Mauney, when did you first begin to work for the Mauney Transfer Company?

A. March 1931.

Q. March of 1931?

A. Yes.

Q. In reply to counsel, you stated the latter part of 1931; is that correct.

A. What did I say, March 1931, or the latter part? As well as I remember, it was March 1931.

Q. That is your recollection, March 1931?

A. Yes.

Q. You are positive that you made all these trips with all these various commodities to and from these various points prior to June 1, 1935?

A. Yes.

Q. When did you first start hauling paper containers from Philadelphia to Clover, South Carolina?

226 A. I will say in the latter part of 1934, but I am not positive.

Q. You are not positive?

A. No.

Q. How many trips did you make from the latter part of 1934 to June 1, 1935, with paper containers from Philadelphia to Clover, South Carolina?

A. I wouldn't want to say.

Q. You won't know?

A. No. I am not positive.

Q. How are you so certain that you started hauling them prior to June 1, 1935?

A. I will say to the best of my knowledge.

Q. You are not positive that you hauled them, are you?

A. All this I am telling you happened before I was married, or shortly afterwards, and I have been married five years. I figure from the time I got married back.

Q. Before 1935?

A. That is right.

Q. Would that same answer be true on these other commodities, you couldn't say when you started hauling them, or how many trips?

A. I couldn't say exactly when; no.

Q. What did you haul principally on the truck you operated?

A. Do you mean northbound or southbound?

Q. Northbound.

227 A. More cotton yarn than anything else, I would think.

Q. You would think?

A. Yes.

Q. You don't know?

A. I would hate to tell it to be a fact and then not know.

Q. You operated the truck, didn't you?

A. Yes, sir.

Q. You remember that you hauled the commodities, but you don't know which one you hauled the most of?

A. That is right. I think I hauled more cotton yarn than anything else, but it would be hard to say positively.

Q. Southbound, what did you haul the most of?

A. I would think that all the different commodities would just about average up the same, maybe some more or some less. I have no way of knowing.

Q. You didn't haul more of any one particular commodity than you did the others altogether, is that it?

A. I wouldn't say for sure.

Q. Your memory is not so good on that part.

A. Well, that has been several years ago, and we hauled lots of things. So many things come up that it is hard for a man to remember all that stuff.

Q. That is just the point. I am wondering how you fixed so definitely that you did haul all those commodities prior to June 1, 1935.

228 A. Up to the time I was married, I can figure out in my mind what I did do.

Q. Where did you pick up the paper containers in Philadelphia and where did you deliver in South Carolina?

A. As well as I remember, it was at the Apex Knitting Mill.

Q. In Philadelphia?

A. Yes.

Q. To whom did you deliver them in Clover, South Carolina?

A. I don't remember.

Q. You don't recall?

A. No, sir. I know the man's initials, but I don't know his last name.

Q. This cocoa from New York, where did you get that in New York, where did it come from?

A. Rungell Brothers.

Q. Where did you haul it to?

A. To Charlotte.

Q. When did you make your first trip with cocoa from New York City?

A. I am driving a 1932 model truck.

Q. Do I understand that you made the first trip in 1932?

A. Yes.

Q. You are sure of that?

A. Unless the truck come out before 1932, I am sure of it.

Q. I don't know when the truck first come out. I
229 want to know when you first started hauling.

A. I can't say positively.

Q. You don't know whether it was in 1932, 1935, or 1936 then?

A. The truck I was driving was practically new, and if it was a 1932 model, it wouldn't be in 1935 or 1936.

Q. How many trips did you make from New York to Charlotte up to June 1, 1935?

A. All I can remember positively was one.

Q. You made that, you think, in 1932?

A. That is right.

Q. Have you made any since June 1, 1935, hauling cocoa from New York to Charlotte?

A. Not that I recall.

Q. Hardware from Baltimore to Monroe, when did you first start hauling hardware?

A. I would say 1932 or 1933.

Q. How many trips did you make with hardware from Baltimore to Monroe prior to June 1, 1935?

A. I wouldn't say positively but as many as four.

Q. You started in 1932?

A. 1932 or 1933.

Q. When was your second trip made?

A. As well as I can remember, the trips ran fairly close together, maybe a period of a week or two apart.

Q. All four were hauled approximately within a week
230 or ten days, were they?

A. No. I might make one trip today, and it may be two weeks before I would make another or it might be a week or ten days, something like that.

Q. You made four trips prior to June 1, 1935?

A. That is right.

Q. About two weeks apart?

A. About two weeks apart.

Q. They started in what year?
A. 1932 or 1933.
Q. Did you haul any in 1935?
A. Not that I recall.
Q. Have you hauled any since June 1, 1935?
A. Not that I recall.
Q. This paper from New York City to Cramerton, North Carolina, what kind of paper was it?
A. Plain wrapping paper that they used in a mill to wrap cotton after it is spun and put on tubes. It is plain wrapping paper about twenty-four inches square.
Q. When did you make the first trip with paper from New York?
A. To the best of my knowledge, it was somewhere in 1932 or 1933.
Q. How many trips did you make prior to June 1, 1935, with paper from New York?
A. None that I can recall.
Q. You don't remember?
231 A. Paper never come in truck-load shipments. It was only a small shipment.
Q. Did you haul any in 1935?
A. I couldn't say.
Q. Have you hauled any since June 1, 1935?
A. No, sir. I haven't.
Q. Bedspreads from Lincolnton, North Carolina, is that a very regular movement or just happened to be one particular shipment that you took?
A. I remember one time, and outside of that, I couldn't say.
Q. Where did you haul them to?
A. They went to Washington, D. C., and Baltimore, Maryland.
Q. How many trips did you say you made with that?
A. I said I was positive of one.
Q. Did you haul any of them—when did you haul that one?
A. I would say 1934.
Q. You haven't hauled any since then?
A. I haven't on the truck I have driven.
Q. Northbound, you hauled principally cotton yarns, is that correct?
A. Yes.
Mr. Toxey. That is all.
The Examiner. I am not much interested in what you hauled in 1933 and 1934. I want you to name everything you hauled between what points from January 1, 1935, to June 1, 1935.
232 The Witness. The points I named before?
The Examiner. I beg your pardon.

The WITNESS. The points that I named before, the points and the commodities?

The EXAMINER. I want you to tell me how many loads you hauled between January 1 and June 1, 1935, each commodity between each point, and the month in which you hauled each load.

The WITNESS. From 1931 to 1935?

The EXAMINER. No, from January 1, 1935, to June 1, 1935.

The WITNESS. I couldn't say.

The EXAMINER. You don't have any idea, do you?

The WITNESS. Take a period of time that far away, and a man who went up and down the road one and twice a week, you would probably fool him, if he had a record of it somebody had kept, a record as to what commodities he hauled, and how many trips he hauled it.

The EXAMINER. That is the reason I am asking you to identify it, because I don't want you to fool yourself [pause].

The EXAMINER. Can you name a single shipment by date, by name of shipper, by commodity, by name of consignee, and the point at which they were located that you hauled between January 1, 1935, and June 1, 1935?

The WITNESS. Not the exact day; no, sir.

233 The EXAMINER. Can you name a single one within a week of the day on which you hauled it?

The WITNESS. I wouldn't want to under oath.

The EXAMINER. Can you name a single one as to the name of the consignee, the name of the shipper, the point of origin, and the point of destination within a month between January 1, 1935, and June 1, 1935?

Mr. RICHARDSON. Name a point that you picked it up, the man that shipped the commodity, what you transported, the place you took it to, and the party you delivered it to, during the month, any month, the first part of 1935, if you can recall.

The WITNESS. I can't recall.

The EXAMINER. That is all.

Mr. TOXEY. That is all.

Mr. RICHARDSON. I have no further questions.

(Witness excused.)

(The Hearing adjourned for an hour.)

ORLANDO HUDSON was sworn and testified as follows:

Direct examination by Mr. RICHARDSON:

Q. What is your name?

A. Orlando Hudson.

Q. What business were you engaged in, Mr. Hudson, during the period of 1932, 1933, 1934, and 1935?

A. Well, in 1932, beginning in August, I was employed
234 as agent for Roadway Express of Akron, Ohio, with headquarters in Akron, but my headquarters were in Gastonia, at 360 West Airline Avenue at Gastonia.

Q. What States did you cover?

A. I was to take care of the states North Carolina and South Carolina, and to begin with Georgia, which I later relinquished because it was too much territory.

Q. What were your luties with Roadway Express as agent?

A. I was the office man, rate man, and indirect solicitor. In November, 1932, I was one of the partners of Akers and Hudson but we did not operate as Akers and Hudson, but merely acted as agents for several truck lines.

Q. You said you were one of the parties, do you mean by that you were one of the two that operated it?

A. Yes, with Mr. Akers.

Q. What Mr. Akers was that?

A. W. W. Akers, Jr., the district manager of Roadway Express, and my superior in the Roadway Express organization, and he and I together split the profits derived from these sides loadings.

Q. When you say "side loading," what do you mean?

A. Loading trucks on the side for compensation not under the jurisdiction of Roadway Express.

Q. I understand by that that you were employing the services of a number of motor carriers and soliciting freight for
235 those carriers to be transported by those carriers?

A. Yes, sir. The first of which was Mr. R. S. Hewitt and Mr. G. E. Hewitt, the two brothers operating as Hewitt Motor Lines of either Claremont or Salisbury, North Carolina. To the best of my knowledge, I believe their trucks showed Claremont, North Carolina, on the door.

Q. Was that along in 1932?

A. Yes. We started with them in November 1932, and the first trip was on a Chevrolet straight truck, 1932 model, driven by Mr. R. S. Hewitt, with a company driver by the name of C. J. Sigmon, and we loaded crated machinery at the Coker Machinery Company in Gastonia, destined to Fall River, Massachusetts, and this load was solicited by Mr. Akers and I jointly from Mr. George Vebor, who was and is yet, traffic manager. This load was billed out on the bill of the Piedmont Motor Express, under the name of R. S. Hewitt Motor Lines and moved on a rate of $1.50 a hundredweight collect at destination, which money was collected by Mr. Ross Hewitt and commission paid to Mr. Akers and me.

The EXAMINER. You have described one movement for another carrier. Let's go to Mauney Transfer Company. What they did is really material.

The WITNESS. I am leading up to that. That was the first one.

The EXAMINER. Let's generally put in what Mauney did
236 for Akers and Hudson. That is the issue in this case, of course.

By Mr. RICHARDSON:

Q. What did you employ Mauney to do, if anything?

A. Business began to increase, and Mr. Everett Mauney come down to Gastonia in response to an ad for the account of Roadway Express calling for trucks, and after my relating to operations to him, he decided he had best stay in his own business, which was the Mauney Transfer Company. At a later date, I happened to see Mr. Mauney on his way to the Rex Mill in Gastonia or Ranlo, to be exact. I stopped him and asked him if he would be interested in hauling a load of tire fabric from McColl, South Carolina, to the Lee Tire and Rubber Company at Conshohocken, Pennsylvania, or another load going to the Overman Cushion Tire Company, it is some New Jersey point.

Mr. Mauney decided to take a load to that tire company in northern New Jersey. I don't recall the exact name of the destination at this minute. This truck was a Dodge, 1932 model red tractor, belonging to Mauney Transfer Company, and to my knowledge, it left Gastonia and went to Marleboro Mills in McColl to pick up this load; instead of going to pick up the Overman Cushion tire shipment, he picked up the one going to Conshohocken, and I had to get another truck for the other shipment.

One of the Roadway Express men decided to quit, John
237 Simpson. He and his company driver, both of these men from Gadsden, Alabama, in a Chevrolet straight truck, followed the Mauney Truck Company to McColl and made the pick up of the Overman Cushion Tire Company. Incidentally, the Overman Cushion Tire Company is in Belville, New Jersey.

The bills of lading, through error, were made Mauney Transfer Company on both shipments, and the check was sent by Mrs. Ammons of the Marleboro Mills, to my knowledge she is still employed there, to me at Gastonia, and that kind of complicated things, because I had two deals with two different truckers. The bills of lading were made on Mauney Transfer Company bill of lading and the check showed to Mauney Transfer Company, so I prevailed upon Mr. Everett Mauney to indorse this check, which he did, and which he cashed at the Young Men's Shop in Gastonia, Mr. Warren Gardner.

Q. Was that the check covering both loads?

A. That check covered both loads, and I retained from that check 20 percent commission, and also deducted the cost of tele-

phone calls from and to McColl, South Carolina, and also telegrams that were interchanged back and forth. As business grew, we were using Mauney Transfer Company and John Simpson, who was operating as Simpson Motor Lines, and the two Hewitt boys as Hewitt Motor Lines, and we were conducting our business as R. S. Hewitt Motor Lines, Simpson Motor Lines, and Mauney Transfer Company.

238 The EXAMINER. Did you have any bills of lading printed?

The WITNESS. No, sir. We didn't have bills of lading. We used old Piedmont Motor Express. We found about two pads of those. We would put on there R. S. Hewitt Motor Lines.

Business picked up, so the check situation began to become a problem. I got the boys to go, and they gave me a letter of authority authorizing me to cash any and all checks issued to Mauney Transfer Company, R. S. Hewitt Motor Lines, John Simpson Motor Lines.

By Mr. RICHARDSON:

Q. When these checks were cashed, whose bank account did you put them on?

A. I put them in my personal bank account which was at the Commercial National Bank in Charlotte. I would issue a personal check to these men when they called on us for the money.

Q. Covering their part?

A. Covering their part.

Now, business still increased, and of all these boys who were operating for us, Mauney Transfer Company was the only one that had insurance.

Q. What period of time was that, Mr. Hudson?

A. The operations started in 1932. This was in early 1933. It was in March 1933 that business had increased to such extent that customers were demanding to be shown the insurance. Heretofore I was frankly telling some of the customers, who were all good friends of mine and I could talk to them frankly,

239 I told them that we didn't have insurance, but we were going to get it. Some, I guess——

Q. You say "we"; to whom do you have reference?

A. I referred to all of these dealings of Mr. Akers and I as "We."

Q. Go ahead. Tell us about these transactions.

A. The first account we had taken on was, of course, the Coker Mill and Foundry Company, who at that time was shipping considerable machinery into New England points; and Mr. Paget of the Charleston Chemical Company gave us southbound chemicals.

Q. Where did they originate?

A. Mr. Paget gave us the first load, which was hauled by Mr. Hewitt, and consisted of some 10,000 pounds of bulk chemicals, which he paid 90 cents a hundred from Manville, Rhode Island, to Charlotte, which was hauled by Mr. Hewitt.

The first trip that the Mauney Transfer Company hauled out was a load of tire fabric from McColl, and they brought their own freight back. On the second trip that they went out, they loaded with McClarin tires to Broadway Tire Company in New York City and brought back a load of chemicals from New Jersey to the American Cyanide Company in Charlotte.

Q. Did you call on the trade as a representative of these motor Lines that you mentioned?

A. Yes, sir; but I used principally in 1933 Mauney Transfer, because it was the only one of them that had the P. D. &
240 P. L. insurance, which carried that property damage and public liability insurance with the St. Paul Fire and Marine Insurance Company. This company also carried their cargo insurance and it was through the insurance company of Kuhn and Carter at Lincolnton, North Carolina.

In soliciting business, I always used a Mauney Transfer insurance policy for my talking points.

Q. You represented that the business was being transported by Mauney Transfer Company?

A. Mauney Transfer Company; yes.

The Southern Asbestos Company, after solicitation for some little time, decided to give me a trial on that, and on the first asbestos shipment we used Mr. R. S. Hewitt and his brother, G. E. Hewitt, on two loads going into Trenton, and the Driver-Harris Company of Harrison, New Jersey, which company sent wire to the Southern Asbestos Company, Charlotte. They began to ask for insurance on R. S. Hewitt and the other carriers, and I couldn't produce it, so I had to get the Mauney Transfer insurance broker, Cuhn and Carter, of Lincolnton, to file a policy with Mr. Griffis of the Southern Asbestos Company, and also the Driver-Harris Company in Harrison, New Jersey. All future shipments of brass wire from then on moved by Mauney Transfer Company, and that lasted until the latter part of 1933, when these other truckers, Hewitt, Simpson, and in the meantime
241 I had added T. R. Miller from Claremont.

These boys began to complain that they were not getting the "cream." This wire was exceptionally good freight and paid good, so they went to Kyhn and Carter and took out individual cargo policies for $1,000 each, which they paid for, and it was made out to T. R. Miller, the B. A. Miller Motor Lines, or John Simpson, individual. Of course, these men owned their own trucks in their own names.

To keep these boys satisfied and keep them hauling cotton yarn, which we were getting from the American Mills under the name of R. S. Hewitt Motor Lines and Mauney Transfer Company, and also from Threads, Inc., which we were getting under the name of R. S. Hewitt Motor Lines.

Q. Where is Threads, Inc., located?

A. They are located in Gastonia. The man who gave me this freight was Mr. William Craver, shipping Clerk, and very close friend of mine. He understood the insurance situation, but told me to be sure to get it, because it would get him in "Dutch" if anything happened.

Q. Did you continue to solicit business and give it to Mauney Transfer as business conditions required from time to time?

A. Yes, sir. Mauney on an average hauled tires to New York and Boston and LTL shipment of tires to Plainfield and Laurens. I would say ever other week. He had a solid load to New York from Charlotte of automobile tires.

242 Q. Were there tubes in that?

A. Tubes were also listed there and also advertising matter was sent on a number of those trips. Mauney, I would say on an average, and kept a record of each company. We made a kind of strip sheet, and listed Mauney Transfer Company when we listed the shipper, which would be the Southern Asbestos Company, Russell Manufacturing Company, Middletown, 7,000 pounds of freight at 90 cents. We would list the bill number and the bill would be made up in the early part of 1932—I mean the latter part of 1932, and early part of 1933, the bills were made in the name of Mauney Transfer and the different truck names. We would show, for instance, some particular loads that Mauney went out with thread going to at least four different shippers in New York City, and there was some asbestos going to Russel Manufacturing Company at Middletown.

Q. Did you, during this period of time, solicit for various kinds of freight and in turn give that freight to Mauney Transfer to haul?

A. I did. I solicited northbound freight for the account of Mauney Transfer under this authority given me by Everett Mauney, one of the owners of Mauney Transfer Company. I solicited cotton piece goods from the Manville-Jenks Mill at High Shoals, North Carolina, which is a point out from Gastonia where cotton piece goods was compressed in bales and went to Manville-Jenks plant in Manville, Rhode Island.

243 Q. Did Mauney haul some of that?

A. Mauney hauled some of that.

Q. What else did you get as a result of your solicitation as representative of Mauney Motor Lines, or Mauney Transfer Company to haul?

A. We got tire fabric from the Marleboro Mills in McCool, South Carolina.

The EXAMINER. When you began to call yourself Akers and Hudson and issued bills or have stationery with the name "Akers and Hudson" on it, did you ever have any of that on it?

The WITNESS. Yes, sir. We had letterheads printed in a Gastonia print shop. I don't know what the name is, but I can take you there.

The EXAMINER. I don't want to go there. I want to know about when it was.

The WITNESS. It was in 1934. In 1934, we had letterheads printed up reading as follows: "Akers and Hudson, Freight Brokers, 363 Air Line Avenue, Gastonia, North Carolina."

By Mr. RICHARDSON:

Q. How long did you operate under that name?

A. I operated under that name all through the year of 1934, and the first part of 1935.

A. During the time you were holding yourself out as brokers, did you solicit business for Mauney Transfer Company among other carriers?

244 A. Yes, sir.

Q. Did you give them the business?

A. We did. I can go a little bit further. We solicited more business under Mauney that Mauney didn't haul, that a lot of those other carriers hauled it.

Q. But you solicited under the name of Mauney?

A. Mauney and these other carriers hauled it like that. Overman Cushion Tire Company was on the bills of lading and the check made out to the Mauney Transfer Company, but Simpson hauled it.

The EXAMINER. When did you first get any bills of lading with the name "Akers and Hudson" on them?

The WITNESS. We first—Mr. Griffis was more or less responsible for that, because his customers were complaining. All along we had blank bills of lading made up where we could insert the names of the different truck lines; in fact, I would go by that.

I would call Southern Asbestos in the morning, and they would probably tell me they were going to have 10,000 pounds with Thermeroid Rubber Company in Trenton, New Jersey. The shipping clerk asked me how I wanted him to make out the 10,000 pounds for, in the name of Hewitt Motor Lines. 15,000 pounds of asbestos yarn going to Russell Manufacturing Company, Middle-

town, was made in the name of Mauney Transfer Company.
245 I called those boys and send them over. I would call the manager of the Mauney Transfer Company, and he would send his truck over.

By Mr. RICHARDSON:

Q. Would they haul asbestos up?

A. They would haul it up. It moved collect, and these boys would sometime, while I had no control over them, sometimes they would collect this money against my wishes, and they invariably would bring me back my part. After while though, we started holding up a hundred dollars on each one of these operators to finance themselves in case he had a breakdown.

Q. What did you give him to transfer southbound, if anything, while you were soliciting business?

A. For his line?

Q. Yes.

A. Yes, sir. We solicited from F. E. Hashhagen, a merchandise broker, in Gastonia, canned goods moving from Baltimore and Frederick, Maryland, which came up to various points, such as Shelby, Kings Mountain, and occasionally down to Clover.

Q. Mr. Mauney handled some of that for you?

A. He hauled some of that for us; yes, sir. Then we solicited Bright, Shiver, and Norcombe Company in Charlotte, who gave us cocoa, which moved via Mauney Transfer Company from New York to Charlotte; and they gave us various canned goods from Biglerville, Pennsylvania, to Charlotte. C. H. Musselman and Son, the shipper which moved to Charlotte, moved to Lancaster, Chester, and occasionally to Albemarle.

246 Q. What other commodities did you get south-bound and which you turned over as agent to Mauney Transfer Company, if anything?

A. We solicited from the Acie and Mead Company, Mr. Paul Halers in Charlotte. He is deceased now. He gave us bulk chemicals provided we would haul it at 50 cents a hundred, from New York, Long Island City, Jersey City, Camden, Philadelphia, Bound Brook, and Woodbridge to Greensboro, Canon Mills at Kannapolis and Charlotte. We also solicited using both names or using a number of names, including Mauney Transfer Company, from a paper company on Bleeker Street in New York City, to various places like Wilson, Rocky Mount, Goldsboro, Cramerton, Anderson, Taylorsville, Lenoir, Hudson, North Carolina, and a little point out from Lenoir.

Q. North Carolina?

A. North Carolina; yes.

Q. Did Mauney haul some of these goods that you just mentioned?

A. Yes, sir.

Q. What else did you get to turn over to Mauney from the east down this way, if anything?

A. Mauney hauled one load of steric beds or steric acid, some kind of product used by McClarin Rubber Company, which moved from Philadelphia. There was 30,000 pounds of this moving. I don't recall the exact month in 1934, but I do recall it was in the summertime in 1934 from Philadelphia to Charlotte;
247 30,000 pounds, and of that Mauney hauled 15,000 pounds of it on one of his trailers, and T. R. Miller of Claremont moved the other 15,000 pounds on a straight truck.

The EXAMINER. You never have told me yet when you began to use Akers and Hudson waybills.

The WITNESS. The actual use of Akers and Hudson freight bills started spasmodic in the latter part of 1934.

The EXAMINER. 1934?

The WITNESS. Yes, sir.

The EXAMINER. Did you use those on shipments other than those of the Southern Asbestos Company?

The WITNESS. We used them on Southern Asbestos to begin with or else we were going to lose their business to some carrier that would set up one.

The EXAMINER. Did you use them on other people's?

The WITNESS. We used our supply of blank bills when we charged the other people's, but we started to having them printed up as Akrers and Hudson Motor Line.

The EXAMINER. How long before Akers and Hudson ever acquired or operated a truck in its own name did you start to use Akers and Hudson waybills?

The WITNESS. May I answer it that way. We first started using those bills spasmodically the latter part of 1934, but Akers and Hudson did not own or operate any trucks at all until January 2, 1936.

248 By Mr. RICHARDSON:

Q. Did you have any control or jurisdiction over these trucks of Mauney while he was hauling this stuff for you—did you assume that position or did you just go out soliciting the business for him?

A. I just went out and solicited the business. I had no control over them at all; though I had a letter of authority from Mr. Everett Mauney giving me authority to solicit business and cash the checks.

Q. Under the bills, these freight bills of Akers and Hudson Motor Lines you were using after the latter part of 1934, did Mauney Transfer continue to transport property that you solicited from various shippers?

A. They did after we had the Akers and Hudson bills of lading made up. That didn't alter or effect the operation at all, but it just continued like *ti* always did.

Q. Except you just had a bill of lading made?

A. That is right.

Q. What is the reason for your getting this particular bill of lading?

A. Well, it was either get a bill of lading, or we were going to lose some of these customers because they were objecting to our making out so many different waybills for so many different shipments, and it was confusing to these different mills and shippers that we called on as to whom was going to handle the freight.

249 Q. And you did that as a matter of convenience?

A. Yes, as a matter of convenience.

The EXAMINER. Did you hear Mr. Griffs' testimony on the subject?

The WITNESS. Yes, sir.

The EXAMINER. Was it correct?

The WITNESS. It was.

By Mr. RICHARDSON:

Q. Tell us about some shipments, if you got any up there in the east, that you gave Mauney Transfer coming back down this way under the solicitation of either Mauney Motor Lines, or Akers and Hudson Motor Lines, or what have you?

A. Well, by offering to handle linoleum rugs which ordinarily moved in 30,000 pound car lots, we were successful in getting linoleum, felts, and floor covering products from Byrd and Sons in East Walpole, Massachusetts. We handled them in 15,000 pound lots at the carload rate.

Q. About when did this linoleum movement start there, if you recall?

A. Linoleum started in 1933.

Q. Did Mauney haul some of that from that time along?

A. Yes, sir. I can recall some specific shipments that he hauled. One in particular, it was a shipment that Mr. Webb Dellinger handled on a return trip of asbestos. He picked up a load

250 of Byrd and Sons rugs going to the North State Material Company in Asheville. To the best of my knowledge, he left the Byrd and Son plant on a certain Monday and did not arrive at Asheville until late Friday, claiming that he had different troubles on the route, and of course, the North State Material Company was contacting me for delivery.

Q. Contacting you as agent of Mauney Motor Lines?

A. That is right. Wanting to know where in the world the shipment was.

Q. Go ahead and tell us what else you gave them, if anything.

A. This was divided up among all the men that were hauling for us, the shipments were varied.

The EXAMINER. Get down to Mauney between January 1, 1935—I am not interested in any others—get down to Mauney on those dated.

The WITNESS. 1935?

The EXAMINER. Yes.

By Mr. RICHARDSON:

Q. Did you solicit business for Mauney Transfer Company during the period of January 1, 1935, and June 1, 1935, and if so, what commodities did you give him?

A. Yes, sir, we did, and he fell in line like the other carriers. He hauled some of the rugs that they were hauling for Glasgow-Allison Company, originating in Marcus Hook, and some came to Charlotte during the period of January 1, 1935, up until June 1, 1935.

The EXAMINER. Did you get him any north-bound traffic
251 during that time?

The WITNESS. Yes.

By Mr. RICHARDSON:

Q. What did you give him?

A. He handled north-bound shipments of asbestos, like always. Of course, at the time we were operating the Linley Trucks, Shagenhoff Trucks, and several others.

Q. Did you alternate the business between those trucks—is that the way you handled it?

A. Yes, sir. We alternated, but if the fellows didn't want to take it out, they just didn't go out. If they came in on Saturday night, and didn't want to go out, there was nothing we could do about it. Mauney fell in on his share of the freight, for instance, like this, on Saturday we would have 60,000 pounds of freight. We lifted all but 10,000, and invariably we would can Mauney. He would come down and pick up what was left, and this consisted of cotton yarns mostly. It was cotton yarns and asbestos.

Q. Going north?

A. Going north, and as a rule, we always gave Mauney these tires because he had open trailers, and those little trucks couldn't handle all of them.

Q. During the period that you began soliciting business for Mauney Transfer Company as their agent on down until June 1, 1935, did you solicit additional commodities from various people
from time to time, which you turned over to Mauney
252 Transfer for transportation?

A. Yes, sir. We broadened out and covered quite a radius of territory in our solicitation endeavors.

Q. Did Mauney Transfer Company go to these various points in various states as you turned business over to him as his agent?

A. He did, or they did rather.

Q. Did you solicit business that went to points different from the ones that the shipments might be going to along from time to time?

A. Yes, sir. I recall particularly the Reading, Pennsylvania, territory. We had been having difficulties in getting sufficient freight going to Philadelphia, New York and those New England states, Connecticut, Rhode Island, and Massachusetts, so we began to work on Mr. Wilson of the Ruby Cotton Mills in Gastonia who ships about 10,000 pounds a day of cotton yarn going into Reading, Pennsylvania, and vicinity. We added in the first part of 1935, sufficient towns, such towns like Hagerstown, Maryland, Waynesboro, Pennsylvania, Schuylkill Haven, Sunbury, Bethlehem, Allentown, Hamburg, Hazeltown, Wilkes-Barre, and such towns as that, which made a sufficient number.

Q. In getting this business to that Reading territory you just described, did it move from down in the Carolinas up there in truck load quantities or was it made up of various less than truck quantities, if you know?

253 A. It was made up of various truck-load quantities. As you know, cotton yarn has always moved on to any quantity rate. All of that was really in an quantity shipment, consisting of anywhere from one case up to fifteen cases to any one consignee. Our men, as we called them then, you see Mauney was operating their own business all along, they didn't rely on us exclusively. Our men began to find fault about going into the Reading territory because they contended it was mountainous, and we always called on Mauney Transfer Company to more or less put off the worse part of that Reading Freight on. Mauney Transfer got the worse part of that.

Q. Did he always haul it for you?

A. Yes, sir. They always hauled it.

Q. You testified awhile ago, as I recall it, that you had a letter of authority from Everett Mauney to cash these checks for him during the period of time the checks were being made out in his name and before you had the bills of lading published. Is that right,

A. That is right.

Q. What became of the letter, if anything, if you know?

A. I kept a file on Mauney Transfer Company, and when there were shipments being traced and when their shipments were damaged or lost or involved correspondence, when this particular

item referred to Mauney Transfer, I always wrote on a letterhead of Mauney Transfer Company and signed it
254 Mauney Transfer Company by me, as agent. I had built up quite a nice file, and I had the Mauney letter on that together with the other files of the other carriers, which Mr. Akers and I in February of 1936, decided we had better burn up.

Q. That is the reason you don't have these records here now?

A. That is the reason we couldn't produce that letter. That was burned one afternoon in front of Miss Kitty Moore, Mr. Akers, and myself.

Q. That is the reason you couldn't produce the particular shipments that were transported?

A. We destroyed all of those records of all of those carriers.

Q. When you did from time to time give Mauney Transfer some of this business up in the Reading area, he continued to transport it?

A. Yes, sir. Mauney continued hauling and has hauled continually since for Akers and Hudson, and even now they still haul.

Q. When did you have any lease arrangements with Mauney in regard to any trucks you were using or during this time you were soliciting freight as his agent?

A. While I was with Akers and Hudson, we had no lease arrangement.

Q. How long did you stay with Akers and Hudson?

A. I stayed with them up until March 1, 1937.

(Discussion off the record.)

255 The WITNESS. While I was with Akers and Hudson in Gastonia, as you know or may not know, I left Gastonia in October, 1936, and went to Atlanta and opened up an office for Akers and Hudson. It was a terminal and we began soliciting business from the Mandleville Mills in Carrollton, Georgia, textile products.

By Mr. RICHARDSON:

Q. What period of time was that?

A. That was in October 1936, and that constituted about a truck load or 20,000 pounds of yarn a day going to Philadelphia, and some to New York City. They make a type of yarn that is used by practically——

The EXAMINER. That was the first ever hauled by Akers and Hudson from there?

The WITNESS. That was the first textile shipment we hauled out of Georgia by Akers and Hudson.

The EXAMINER. When did you first begin to call yourself Akers and Hudson?

The WITNESS. We first called ourselves Akers and Hudson in 1934.

The EXAMINER. Were you partners then or two individuals?

The WITNESS. We were partners, but not incorporated partners. We split everything fifty-fifty. As a result of a wreck, and through the influence of Mr. Fred McIntyre of the Carolina Truck and Trailer Company, we incorporated to protect ourselves personally.

256 By Mr. RICHARDSON:

Q. About what time was that?

A. In 1935. Mr. Ernest Warren was the incorporator.

The EXAMINER. Was that after June 1 or before?

The WITNESS. That was before June 1.

By Mr. RICHARDSON:

Q. The first part of 1935?

A. The first part of 1935.

Q. Why did you incorporate?

A. As I just related, Roy Hines operating as Hines Motor Lines had carried a load northbound and had picked up a load of his own which consisted of flour, and he had a wreck, head-on collision coming back. Of course, we had P. D. & P. L. insurance, each man "kicked" in $27 a piece until we raised up a down payment to get the insurance under the name of Akers and Hudson Motor Lines. This insurance read they had to be hauling freight under the bill of lading of Akers and Hudson, and Hines was hauling his own freight then, and the party was getting ready to sue Roadway Express, and I think included about everybody, including us personally, but it was settled. So to protect ourselves personally, we incorporated it.

The EXAMINER. Was the name "Akers and Hudson" on Hines' truck when that happened?

The WITNESS. No, sir. It wasn't on his truck. It was on two pieces of tin which we stuck on the side of the trucks, and some of the states up the road requested them, particularly in
257 Maryland. We would tack it on little pieces of tin and then take it off and put it in the inside of the truck.

By Mr. RICHARDSON:

Q. What year was that when you had the tin plates?

A. That was in 1934.

Q. As a result of your solicitation, Mr. Hudson, did you get any batteries that you gave to any of these boys up in that country back down that way, if you recall?

A. I got batteries from the National Battery Company in Harrison, New Jersey, which came to the Goodrich Company in Charlotte and Gastonia and Shelby. On this particular move-

ment, I cannot recall whether Mauney handled any of these batteries or not, for at that time the business was using some fifteen pieces of equipment and we had so many commodities were coming in and out that I couldn't recall just on whose trucks each was moving on. There was a good chance that he did handle some, and a chance that he didn't.

The EXAMINER. What became of the bills covering those movements along about that time?

The WITNESS. Bills of 1935 movement?

The EXAMINER. Yes.

The WITNESS. The first of 1935, I started making up a little file folder for each trip. On this folder, I would put Mauney Transfer, Webb Dellinger, driver, whether the shipment was delivered direct or transferred. Those files, to my knowl-
258 edge, when I left were still in the possession of the Akers and Hudson Company.

By Mr. RICHARDSON:

Q. Mr. Hudson, during this period of time you were soliciting business as agent for Mauney Transfer Company?

A. Mauney Transfer and others.

Q. Did you distribute to Mauney Transfer for transportation new and different commodities along with the growth of the business?

A. Yes. I would say Mauney Transfer shared in transporting or received the benefit of every commodity solicited for Akers and Hudson.

Q. Do you mean at one time or another?

A. At one time or another, they handled some. We started in 1935 to handling wine, and I know for a fact that Mauney Transfer handled some of the wine.

Q. Where did the wine originate?

A. The wine originated at New York City.

Q. Where did it go?

A. To my knowledge, it went to Athens, Georgia, and possibly one point in North Carolina, Concord, Charlotte, and one particular shipment went to Athens which was transferred.

The EXAMINER. Where about?

The WITNESS. At Gastonia to another one of the trucks going down to Atlanta. I do recall that moving on a Mauney truck.

259 By Mr. RICHARDSON:

Q. Which one moved on Mauney Transfer truck?

A. One particular shipment of wine which included a wine press and wine, and some of it went to a man—I can't recall his name—in Concord.

Q. North Carolina?

A. In North Carolina, but the wine went there, and Mauney's truck delivered it and came on in and turned the bills in to me at Gastonia.

Q. During the period of time here that you were soliciting agent for Mauney Transfer Company, beginning back in 1932, I believe you said and down to 1936, was there any time that you had a lease on the equipment owned and operated by Mauney Transfer?

A. No, sir. There was no lease whatever. I would merely contact Everett Mauney or the acting manager or somebody at 182, Cherryville, which sometimes were the drivers, Mr. John Mauney, Webb or Loyd Dellinger, and pass the information along to them, and they would carry out the orders.

Q. Did you assume control at any time over the vehicles of Mauney Transfer at any time during that period?

A. No, sir. I didn't have control over any of Mauney's vehicles or any of the vehicles. The men who owned them paid their own drivers, paid for their gasoline, and their own license tags,
260 and made their own repairs, and bought their own tires.

Q. Did you consider at any time that the drivers of these trucks were your employees?

A. No, sir. They were not employees of the Akers and Hudson Company, except Miss Caroline Richberg, who came there as stenographer, and Mr. Bill Tomlin. Those were the only two employees of the Akers and Hudson Company.

Q. That condition existed down to about January 1, 1936?

A. It did.

Mr. RICHARDSON. That is all.

The WITNESS. There is one more thing that I recollect. In the latter part of 1935, Robert Wrenn was employed to keep books.

Mr. RICHARDSON. For whom?

The WITNESS. For Akers and Hudson, and he kept separate books for W. H. Lindley and kept separate books for Claude Slaggenhoff. Robert Wrenn received compensation from Lindley and Slaggenhoff on the basis of $5.00 per truck.

By Mr. RICHARDSON:

Q. Did he keep any books for Mauney Transfer during that period?

A. No, sir; he did not. On loads that were hauled for and by Mauney Transfer Company, we paid them or they paid us the commission.

Q. They kept their own records?

A. That is right. They kept their own records.

261 Mr. RICHARDSON. That is all.

Cross-examination by Mr. TOXEY:

Q. Mr. Hudson, by whom are you employed at present?

A. I am employed at present by Carolina Freight Carriers Corporation.

Q. In what capacity?

A. As solicitor.

Q. Soliciting freight?

A. Soliciting freight or general flunkey or anything else.

Q. How long have you been employed by the Carolina Freight Carriers?

A. Since June 1938.

Q. By whom were you employed prior to June 1938?

A. I was employed by the Florida East Coast Railroad.

Q. How long?

A. From March 1 until June 1.

Q. When did you leave the employ of Akers and Hudson?

A. March 1, 1937.

Q. When you were with the Akers and Hudson Motor Company as broker, did you keep a record of the various truck lines assigned to haul particular loads?

A. Yes, sir. Each truck line had its own file of loads hauled. For instance, R. S. Hewitt Motor Lines had a complete record and T. R. Miller Motor Lines had their complete records,
262 and The Mauney Transfer Company had their own complete records.

Q. Where are those records now?

A. Some were destroyed by fire. I can say that when I left there going down to Atlanta in October 1936, some of those records for the latter part of 1934 and 1935 were still intact.

Q. You don't have any of those records?

A. I don't have any of those records; no, sir. They were in Gastonia when I left.

Q. You relied entirely upon your memory to give specific reference to these shipments which you mentioned as being transported by the Mauney Transfer Company?

A. Yes, sir. I relied upon my memory.

Q. The Mauney Transfer Company hauled more traffic for you as a broker than any other truck people, would you say?

A. No, sir; they did not, but they averaged, I can safely say they averaged during from 1934 through 1935, when I had access or handled practically all this myself, they handled an average of twenty loads a month up and back, that is from the two Carolinas and up to eastern points and back to the Carolinas from the eastern points.

Q. Twenty loads a month?

A. Yes.

Q. How many loads did Hewitt Motor people haul for you a month?

A. Hewitt only had one truck himself, and his brother had the other. They would average eight loads a piece per
263 month. Simpson had only one truck, and they averaged about eight trips a month; that is, they averaged a round trip every week, one out and one in.

Q. Approximately thirty-six trips a month were distributed to those three truck lines?

A. Yes, sir. If it can be found, I made a report for each one of these trucks for the year 1934, and showed the number of trips each driver made north, the gross amount of his revenue, the gross amount of commissions deducted, and if that can be found in the Akers and Hudson files, that would give you the story of each individual man, the number of trips he made, and it shows the actual number of pounds handled on each trip, which is totaled up at the end of the month showing the gross poundage under the names of each one of the trucks.

Q. Why is it that you are so positive that these shipments you testified to moved by the Mauney Transfer Company were actually made over that line and not over some of the other truck lines that you had contact with?

A. Well, as a rule, I solicited the freight, and I stayed in the office at Gastonia and made the bills up myself and got the freight. I helped load these trucks and made the reports up covering them, so naturally, doing that type of work, I would remember in detail quite a number of them. I not only remember the Mauney Transfer loads in particular but I can name for you specific loads
264 of the other boys, the other carriers.

Q. When bills of lading were issued under the Akers and Hudson Motor Lines, I believe you stated that was in 1934 that practice started?

A. Yes.

Q. Who kept the copies of those bills of lading, Akers and Hudson Motor Company?

A. Yes, sir. I had a file, and at the end of each week or the end of each day, I would take all the general copies which these bills were made up in sets of five each with different colors. The general copy was marked "office copy," and each copy was kept in this file, and at the end of the week, I would make up a statement and list each one of these bills as the date, number, consignee, destination, and the amount and rate, the total. I would total it up and collect a check for it; that is, on prepaid shipments.

Q. Was the copy of the bill of lading given to the truck company who performed the transportation?

A. Yes, sir. Two copies were given to the truck company after we used the name Akers and Hudson. If the Mauney Transfer Company handled it, we marked it that way, and if the Hewitt truck handled it, we marked it "Hewitt," and if Miller handled it, we marked it "Miller." In that way, we knew which trucks handled which shipments. In other words, if a shipper was tracing a shipment, we would look into the file and see what
265 truck handled that number. Mauney Transfer Company didn't always turn their receipts in, but as a rule, kept most of them after they had delivered the shipment. I would look into this file I had prepared, showing the shipment number and load number. If I couldn't find the delivery receipt there, I would look back to a Mauney Transfer description sheet to see if they had turned it in, whether he delivered it direct or whether he transferred it.

Q. Do I understand from that copy of bill of lading made out in the name of Akers and Hudson given to a transportation company or truck line, who performed the service, was returned to you?

A. We asked for it, but we had very little control over it, sometimes they would turn it in, and sometimes they wouldn't.

Q. Sometimes they kept it for their records, and other times they returned them to you?

A. Yes. As one of these men or rather two of them, considering Mauney Transfer Company, filed their own application, some five of them wanted to file their application too.

Q. Some five of which men?

A. For instance, Ray Yount, Yount Motor lines, and D. L. Hines, Hines Motor Lines, C. J. Sigmon, operating as Sigmon Motor Lines, but they told me they couldn't because they were hauling for Akers and Hudson, and that discouraged them from filing the application.

266 Q. Were they hauling under lease arrangements?

A. No sir. There was no lease arrangement at all. They had no written lease arrangement at all.

Q. Were they hauling for Akers and Hudson similar to the Mauney Transfer Company?

A. Yes, sir. They were performing the same services. They would sometimes get their own loads.

Q. You left Akers and Hudson in March 1937?

A. Right.

Q. You started with that concern at what time?

A. 1932.

Q. In 1932?

A. Yes; but in 1932, we didn't operate as Akers and Hudson. I had a letter of authority from Mauney Transfer Company, which

was the only company of the three operators, that is Hewitt, Simpson, and Mauney. Mauney was the only one that had insurance. Akers and Hudson did not start being operated as Akers and Hudson until 1934. I will say that a shipper might have put a little pressure on me, and I might have made it Akers and Hudson in the latter part of 1933.

Q. From 1934 to 1937, you were operating as Akers and Hudson?

A. 1934 through 1937.

Q. When did they first obtain equipment going to the common carrier truck service?

A. They started negotiating on January 2, 1936.

267 Q. Prior to January 2, 1936, did they own any motor vehicle equipment at all?

A. No, sir. They didn't own or operate any kind of motor equipment.

Q. Did they have any under lease?

A. None under lease.

Q. No operating arrangements at all?

A. They were simply brokers. Our stationery implied that, it said, "Akers and Hudson, Freight Brokers."

Q. When you were with Akers and Hudson after they started common carrier truck service which you stated as January 1936, did you consider shipments which you, as brokers, turned over to other transportation companies that gave you authority under the grandfather clause to initiate a common carrier service?

A. To be frank, I didn't quite understand the Motor Carrier Act. To be frank, we were afraid the men would file their own, and if we filed one, it would complicate matters, so we discouraged them.

Q. Did Akers and Hudson file an application for common carrier service under the grandfather clause?

A. Yes, sir. We filed one under the grandfather clause.

Q. At the time you were in their employ?

A. Yes, sir.

Q. Did they rely upon the transportation services per-

268 formed by others such as Hewitt and Mauney giving them rights under the grandfather clause?

A. Yes, sir. We relied on those trucks up until January 2, 1936, and after January 2, 1936, these two largest owners of equipment pulled a "fast play," you might say, on us, and forced us to buy all their equipment.

Q. What were the two largest owners of equipment?

A. Mr. W. H. Lindley and Mr. Claude Slaggenhoff.

Q. How were they connected with Akers and Hudson?

A. They were both drivers and operators of equipment for Roadway Express, and Lindley became stranded down in Gas-

tonia. We loaded his truck just like the other equipment. He just stayed on and eventually bought another truck, and we made a mistake and didn't stop them. The same thing is true of Slaggenhoff except he came down at our request and grew from one truck up to four or five. The other operators were single truck operators, and——

Q. You say "other operators," do you mean those five you enumerated a short while ago?

A. No, but quite a few of them, Hoy Hines, D. L. Hines, the two Hewitt trucks, doing business as Hewitt Motor Lines, Ray Yount, Simpson, and a Hudson from Gastonia, no kin to me.

Q. Were they truck operators that Akers and Hudson solicited traffic for?

A. Yes, sir. They were truck operators and we solicited
269 the business, and we got the boys to haul it.

Q. Did they handle traffic in much the same manner as Mauney Transfer Company?

A. With the exception that Mauney Transfer Company handled our regular business, and they conducted their own business, too. Mauney Transfer was hauling the Rex Mill business out of Gastonia, which was a very desirable movement. They had more equipment than these other men. Mauney had maybe when we first contacted them two pieces of equipment, and they added another. As a rule, Mauney brought back quite a bit of freight of their own, and had room to handle, I would say, twenty loads a month for us.

Q. How long were you acting as a broker under the Akers and Hudson Company for those other carriers? As I understood it, you were only operating as broker for about three.

A. We increased as business increased, and added the trucks and anybody that we could get. Perhaps it you were in Gastonia at that time, we would probably have approached you for it.

Q. Was your connection with these other truck operators similar to that with the Mauney Company—you didn't lease their trucks?

A. No, sir. We didn't lease their trucks at all nor any other trucks.

Q. Your connection with these other truck operators was exactly the same as with the Mauney Transfer?

270 A. Yes.

Q. Simply as broker?

A. Simply as broker.

Q. Soliciting freight for those truck operators as well as the three you previously named?

A. That is correct.

Q. When did you solicit any freight for these seven or eight operators, for what period?

A. They were added at various times.

Q. About what time?

A. I can't tell you the exact dates, but a few were to come in possession of that report I made up of the different trucks. You can see by the months as men were added and as men fell out.

Q. Your memory has been pretty good on the shipments you are absolutely certain moved by the Mauney Transfer Company, so I think it should be equally good on the times they were added and started operating for you.

A. I can give you the approximate time that nearly everyone started to operating. I can recall, I believe, specific shipments that would reflect on these operators that they handled However, I do recall when we first started out on this that Mauney predominated because he was the only truck line that had insurance, and for a long period there we had to use him to haul the cream of the freight which was the asbestos northbound and that wire southbound.

271 Q. Do you mind giving the names of these operators again in addition to Mauney, Simpson, and Hewitt?

A. I can't give you the exact dates, but I can give you the line-up as they were employed.

The first one, R. S. Hewitt and his brother, G. E. Hewitt, operating as Hewitt Motor Lines. They claimed Claremont and Salisbury as their headquarters, and to my knowledge, showed Claremont on the side of the truck. The second one——

Q. When did you first contact those people?

A. They were in 1932.

In 1932, the Mauney Transfer Company made their appearance in there, and either at the end of 1932 or the first part of 1933, John Simpson, from Gadsden, Alabama, came up. Following John Simpson, there was a boy by the name of Wes Jenkins from Gadsden, Alabama, who also operated spasmodically for us as Jenkins Motor Lines and then sometimes for Roadway Express.

Q. What year was that?

A. That was the first part of 1933. Following Jenkins, was T. R. Miller of Claremont, North Carolina, and following him, was Foy Miller.

Q. What year did Miller operate?

A. 1933. All of these I am naming over came in 1933.

Foy Miller and Kermit Allspaw from Taylorsville or Hiddenite, North Carolina. A fellow, Teague, I don't recall his initials, but he came from Taylorsville.

272 Q. 1933?

A. Yes, sir. Then the latter part of 1933 or the first of 1934, D. L. Hines from Taylorsville came in, and another

boy by the name of Roy Hines, and then Ray Yount made his appearance. Mr. M. L. Pannell of Claremont. Incidentally, Mr. Pannell was killed in an accident at Delaware.

Q. All of these in 1934?

A. These are 1934.

Q. Is that all?

A. In the latter part of 1934, W. H. Lindley came there from the Roadway Express. This was the latter part of 1934, because his license expired in that year, and the new year caught him down in the Carolinas. The company he was hauling for wouldn't give him any more advances or something to that effect. He stayed on with us. Mr. Slaggenhoff came down about two months following that. I would say that was either the first part of March or the latter part of February that Slaggenhoff came from some place in Indiana where he was operating for Roadway Express. The last man taken on was a boy up at near Statesville. His last name was Alexander, but I can't recall his first name. He was the last leased man to be taken on. In the meantime Lindley and Slaggenhoff began to grow, and they predominated the field with Mauney coming in there as the third largest one operating over there.

Q. Alexander came in 1935?

273 A. Yes. He was the last man to come on before January 1, 1936. Thereafter, as business increased this boy Lindley and Slaggenhoff were adding equipment on.

Q. What did you mean a minute ago by saying the "last leased man" to come on?

A. He was the last man hired.

Q. You don't mean he was under a lease?

A. I don't mean that he was a leased man. I would like to retract that. He was the last man that came down with a truck, until January 1, 1936, and then the company continued operating after this forced issue was made by Lindley and Slaggenhoff to come into the company. They sold their equipment to Akers and Hudson Motor Lines, Inc., and took stock in lieu of it.

The EXAMINER. Did they sell their right to Akers and Hudson, too?

The WITNESS. They did not sell their right. As you recall, Mr. Lindley attempted to file his application. I don't know what happened, but he attempted to file it. Mr. Bleese is familiar with that.

Prior to January 2, 1936, Lindley and Slaggenhoff had their own desks in the building at 363 West Air Line Avenue, and they kept their own books and hired their own men, made their own pick-ups, had their own pick-up truck, and when they picked

up freight that was hauled by these other men, they
274 charged the other men 10 cents a hundred for picking it up.

By Mr. Toxey:

Q. What territory was what commodity did these additional twelve operators handle and serve? Did they transport commodities and operate in the same territory as the Mauney Transfer?

A. Practically the same, yes. I would say the same territory.

Q. Practically the same territory?

A. The same territory. We worked on cotton yarns originating in Kings Mountain, Bessemer City, Gastonia, Ranlo, Rock Hill, South Carolina, and Clover, South Carolina, moving to points about Baltimore and going over as far as Reading, Pennsylvania, including Philadelphia, Wilmington, Delaware, and various points in the state of New Jersey, up to New York City, with occasional trips over to Buffalo, New York, and into the New England states—Connecticut, Rhode Island, Massachusetts. On southbound, we picked up in the three New England states of Connecticut, Rhode Island, and Massachusetts, New York City proper, New Jersey points, we cut the state of Pennsylvania in half, anything on the eastern half, back over toward Philadelphia, Baltimore, and various Maryland points, coming into the Carolinas. We handled linoleum felt base rugs and floor material from Marcus Hook, Pennsylvania, occasionally New Jersey—Camden, New Jersey—going into Atlanta, Georgia, occasionally to Macon, occasionally to Savannah, and occasionally to to Albany, and that was broadened to include shipments from
275 East Walpole, moving to Atlanta and to Macon. In 1935, after June 1, 1935, that was broadened to cover points like Alabama like Birmingham, which we transferred by Georgia Motor Express in Atlanta or by Howard Hauling Company in Birmingham and the Dixie Highway Express. These three trucks, after unloading in Albany, Macon, Savannah, and Atlanta, would return empty to Gastonia, the terminal for a loading of their northbound shipments.

Q. Prior to June 1, 1935, about how many trips a month did Wes Jenkins make for Akers and Hudson as brokers?

A. I am afraid—Wes Jenkins, while he was hauling, averaged eight trips, that is a round trip a week. In other words, four round trips.

Q. Four month and four south?

A. That is right.

Q. How many trips did Miller average a month for you prior to June 1, 1935?

A. All these men averaged a round trip a week. Occasionally they would get in an extra trip.

Q. Would you safely say eight trips a month?

A. I would safely say that.

Q. Is that approximately correct?

A. I will safely say, as that report will bear me out, eight will be the average over a period of a year.

Q. Will that report bear you out?

276 A. That report, if it can be found in Akers and Hudson files, showed reports at the end of each month, the gross amount of revenue derived from each truck, the gross tonnage handled by each truck, and the gross commission derived from each truck.

Q. Did you make any effort to get that report prior to this hearing?

A. No, sir. I had no business over there to try to get it.

Q. Did you make any effort whatsoever?

A. Nos, sir. That report wasn't needed at this hearing, except to introduce and show that Mauney Transfer as well as these other companies transported quite a bit of tonnage.

Q. Approximately, these trucks made a hundred and thirty-two trips a month for you prior to June 1, 1935, all of them together?

A. This report would show in detail every trip. If you can get that, you can see the whole picture for 1933 and 1934, possibly.

The EXAMINER. We haven't got that though. Was a hundred and thirty-two about right? That report is not here?

The WITNESS. The report is not here, of course; no.

The EXAMINER. Would a hundred and thirty-two trips be about the number that was run monthly?

The WITNESS. Yes, sir. All those boys would average, because we kept—we would start at each month and make a set of numbers like 340, 342, or 343, and as each number was used

277 for a load, I would mark the man's name on it. We would try to make that run way over a hundred. I recall that it always run way over a hundred monthly, way over a hundred trips loading out and *and* loading in. We considered when a man would go in, that was one trip; and when he went out, that was another trip.

The EXAMINER. You feel that your memory couldn't be faulty as to these specific shipments that you testified to hauling by Mauney Transfer Company?

The WITNESS. No, sir.

The EXAMINER. Is it possible they could have been hauled by any of these other people operating for Akers and Hudson?

The WITNESS. I doubt very much if it could be confused because I handled the bills, describing the loading. I was very familiar with the entire procedure.

The EXAMINER. What makes you so certain that they were shipments moved by this particular trucking company rather than any others?

The WITNESS. I happen to know the boys and naturally if a truck would come down with John Mauney on it, we always had a friendly chat, laughed and talked while loading on these shipments. His shipments are very fresh in my mind, because I had to make the records of them, keep the records of the, I collected the money, I kept the book records, so naturally I was more or less
278 familiar with all these transactions, all these loads, and all these pick-ups.

The EXAMINER. Out of the hundred and thirty-two trips made in a month, you feel confident you could go back prior to 1935, single out the ones hauled by the Mauney Transfer Company?

The WITNESS. I can't single out all, but I can come pretty close to singling out any number of them.

The EXAMINER. You are absolutely certain they did move by that company?

The WITNESS. Yes, sir. I am certain they moved by Mauney, and not only Mauney but some of the other lines that were operating.

The EXAMINER. You are absolutely certain that Akers and Hudson didn't have any trucks and operate common-carrier service prior to January 2, 1936?

The WITNESS. I am under oath. They absolutely didn't.

The EXAMINER. Did Akers and Hudson acquire the right of Slaggenhoff or Lindley when they acquired their property?

The WITNESS. The bill of sale was omitted because there was quite a bit of worry about it, and following that, the equipment of Foy Miller and Ray Yount was bought particularly to get the bill of sale. Foy Miller and Ray Yount also sold their rights under the grandfather clause to Akers and Hudson; however, neither Foy Miller or Ray Yount filed an application.

279 The EXAMINER. Did either one of them operate before June 1, 1935?

The WITNESS. Yes, sir. For your information, Foy Miller and Roy Yount's equipment was bought in 1936.

The EXAMINER. After January 2?

The WITNESS. After January 2; yes, sir.

The EXAMINER. I have no further questions.

Redirect examination by Mr. RICHARDSON:

Q. Mr. Hudson, in making the application for Akers and Hudson Motor Lines, when it was filed, was it your understanding that

if you had any operating rights at all, Akers and Hudson, it would be necessary for you to protect them?

A. Well, to be frank, we didn't give the Motor Carrier Act, which was supposed to have been put in effect on June 1, 1935, much thought. In fact, it was kind of a remote thing to us, because during the N. R. A. period, instead of filing one of those N. R. A. registrations in the name of Akers and Hudson, it was filed in the name of W. H. Lindley, and one in the name of Slaggenhoff, one in the name of C. J. Sigmon, and any other operators that were operating. We thought it was going to be more or less another N. R. A. affair. Right at the closing stages Mr. Wilkerson and Mr. Cluttz of Horton Motor Lines kind of impressed us with the importance of it, so we went to see Mr. Wilkerson
280 and he directed that we contact Mr. E. H. Hanson, an attorney in Charlotte, for advice. This application was prepared thereafter. I prepared it with the help of Mr. Akers.

Q. You prepared it and filed it to protect whatever rights, if any, were vested in Akers and Hudson Motor Lines?

A. That is right.

Q. It was your understanding that if you had any rights by reason of these operations you would have to protect them by filing this application?

A. Prior to this time, these carriers were thinking of filing themselves, and of course, Hewitt did file. Hewitt had been away from us for a year or so hauling for himself, anyway he had left us entirely. Rather than have those men filing and putting us at the mercy of them, which was bad enough as it was, we decided to file ourselves, thinking that we could protect what rights, if any, we had.

The EXAMINER. Did Akers and Hudson file broker application, also?

The WITNESS. No, sir.

The EXAMINER. They never did?

The WITNESS. No, sir.

Mr. TOXEY. I would like to ask one more question.

Recross examination by Mr. TOXEY:

Q. You stated you personally filed the application for Akers and Hudson?

281 A. I prepared it, Mr. Akers signed it, and it was filed under the direction and under the guidance of Mr. Hanson.

Q. You were supporting whatever grandfather rights, if any, that you had on shipments, way bills, and bills of lading, under which other truck lines had transported for Akers and Hudson as a broker?

A. Yes, sir. The bills of lading showed Akers and Hudson, but of course, they were all brokerage operations.

Q. Were the bills of lading and other shipping papers or traffic transported by the Mauney Transfer Company used as a basis for the grandfather rights for Akers and Hudson?

A. In preparing this application, we didn't give any supporting evidence of bills of lading. We merely filed the application and drew the necessary papers and showed the different routes over which we operated and gave, as example, how loads were handled, but we didn't say who owned the trucks, naturally, and prepared up——

Q. What do you mean by "naturally"?

A. Naturally we didn't want to file an application and say these trucks were owned by W. H. Lindley, Slaggenhoff, and T. R. Miller and Ray Yount. You see we never bought any license tags for those trucks.

The EXAMINER. I don't think we can go any further into Akers and Hudson. I think we have diverted from the Mauney Transfer line.

282 The WITNESS. That is what I was called in for was to give evidence affecting the Carolina Freight Carriers or Mauney Transfer.

The EXAMINER. Are there any further questions? I am talking about questions in regard to Mauney as related to Akers and Hudson. If there are, I will hear those, but nothing else.

Mr. RICHARDSON. I have no further questions.

Mr. TOXEY. I have none.

The EXAMINER. All right.

(Witness excused.)

C. GRIER BEAM testified further as follows:

Redirect examination by Mr. RICHARDSON:

Q. I hand you a document and ask you if that document is prepared from the records of Carolina Freight Carriers Corporation?

A. Yes, sir.

Q. That document shows shipments which were transported by Carolina Freight Carriers Corporation?

A. Yes, sir.

Q. Or by Mauney Transfer Company during the time that you have been operating that business?

A. Yes, sir.

Q. Are these the records in this envelope from which

283 that document has been prepared?

A. Yes, sir.

Q. Is that statement true and correct to the best of your knowledge and belief?

A. Yes, sir.

The EXAMINER. Was each shipment shown thereon actually transported by Carolina Freight Carriers Corporation from origin to destination?

The WITNESS. Yes, sir.

The EXAMINER. As shown on this list?

The WITNESS. Yes, sir; all of it.

Mr. RICHARDSON. We offer that as exhibit No. 4.

The EXAMINER. It will be marked for identification as exhibit No. 4.

(Exhibit No. 4, Witness Beam, was marked for identification.)

The EXAMINER. Are the records here supporting that?

The WITNESS. Yes. The bills of lading are in there for every item.

The EXAMINER. All right.

Recross-examination by Mr. TOXEY:

Q. Are all the supporting documents covering shipments enumerated on exhibit 1, exhibits 1 and 4, on bills of lading or shipping papers issued by the Mauney Transfer Company or the Carolina Freight Carriers?

284 A. I didn't get the question.

(The question is read by the reporter.)

The WITNESS. I still don't understand exactly what you mean by that question.

The EXAMINER. Off the record.

(Discussion off the record.)

The WITNESS. Yes, sir.

Mr. TOXEY. The answer is yes?

The WITNESS. Yes.

The EXAMINER. Was each shipment on exhibit 1 and exhibit 4 carried from origin to destination without interchange either by the Mauney Transfer Company or Carolina Freight Carriers Corporation?

The WITNESS. With the exception of New York City.

Redirect examination by Mr. RICHARDSON:

Q. What interchange, if any, existed there?

A. I don't deliver anything in New York City, because the law doesn't allow it.

Q. Where do you take it?

A. To Meyers Forwarding Company, who act as our agent.

Q. Where are they located?

A. 135 West 17th Street.

Q. You take it into the city of New York?

A. Yes.

285 Q. They do your local delivery in New York City?

A. And picking up. I have an office in their building.

The EXAMINER. Mr. Beam, do you know Mr. S. M. Butler?

The WITNESS. Yes, sir.

The EXAMINER. Was he the president of Mauney Transfer Company, Inc.?

The WITNESS. At one time; yes, sir.

The EXAMINER. Was he such official on January 22, 1936, the date he signed this application?

The WITNESS. I am not positive as to what title he held. I know he was connected with the Mauney Transfer Company in some way.

The EXAMINER. Was he the chief official at the time this application was signed, do you know, January 1936?

The WITNESS. I don't know whether you would call him the chief official or not. I would say this that the application was made out and did not represent all the territory that the bills of lading show.

The EXAMINER. The bills of lading were later delivered to you?

The WITNESS. Yes, sir. If I had made the original application, I would have asked for different territory from what was asked for in that application.

The EXAMINER. They claimed a regular route operation in there, does any evidence you have found since you took over
286 the records and management of this company, any indication that there ever was a regular route operation?

The WITNESS. I don't think they knew what they were talking about when they were talking about a regular route.

The EXAMINER. Have you continued a regular route operation since you had it?

The WITNESS. No, sir. We load a load going to Hagerstown, Maryland, and we take it to Hagerstown, Maryland, the nearest way we can go, the best roads.

The EXAMINER. As successor in interest, you don't claim a regular route operation with service to intermediate points as a regular route operator, do you?

The WITNESS. No, sir.

The EXAMINER. Are there any exceptions to the way the holding out of this company has been set forth in your interview statement signed before Mr. Raymond on January 5, 1938?

Mr. RICHARDSON. You still want the exceptions named on here to prevail?

The WITNESS. Yes, sir.

The EXAMINER. That is all.

Mr. RICHARDSON. That is all.

The EXAMINER. Is there any objection to exhibit No. 1 and exhibit No. 4 in evidence?

Mr. TOXEY. No.

287 The EXAMINER. Exhibit No. 1 and exhibit No. 4 are admitted in evidence.

(Exhibit No. 1 and Exhibit No. 4, Witness Beam, are received in evidence.)

Mr. RICHARDSON. That is all.

(Witness excused.)

The EXAMINER. Do you wish to file briefs?

Mr. RICHARDSON. No.

Mr. TOXEY. No.

The EXAMINER. The hearing is adjourned.

(Whereupon at 10:35 p. m., the hearing was closed.)

288 *Exhibit No. 1—Witness Beam*

STATEMENT SHOWING SHIPMENTS TRANSPORTED BY MAUNEY TRANSFER COMPANY, INC., AND/OR CAROLINA FREIGHT CARRIERS CORP., CHERRYVILLE, N. C.

From—	To—	Commodity	Date
Marion, N. C	Brooklyn, N. Y	Cotton Yarn	4/26/35, 5/17/35.
Do	New York, N. Y	do	4/19/35, 4/26/35, 5/17/35.
Do	Allentown, Pa	do	4/19/35, 5/4/35, 5/15/35, 5/22/35, 5/29/35.
Do	Auburn, Pa	do	4/19/35.
Do	Girardville, Pa	do	4/19/35, 4/26/35.
Do	Hamburg, Pa	do	4/19/35, 5/17/35, 5/29/35.
Do	Hazleton, Pa	do	4/26/35, 5/18/35.
Do	Leesport, Pa	do	5/10/35, 5/15/35.
Do	Linfield, Pa	do	5/25/35, 5/29/35.
Do	Orwigsburg, Pa	do	4/26/35.
Do	Philadelphia, Pa	do	4/19/35.
Do	Phoenixville, Pa	do	4/19/35, 4/26/35, 5/22/35.
Do	do	Yarn Tubing	4/19/35.
Do	do	Cotton Yarn	5/25/35, 5/29/35.
Do	Port Carbon, Pa	do	4/19/35.
Do	Port Clinton, Pa	do	5/17/35.
Do	Reading, Pa	do	5/10/35, 5/15/35.
Do	Royersford, Pa	do	4/19/35, 5/25/35.
Do	Schuylkill Haven, Pa	do	4/26/35.
Do	Shamokin, Pa	do	4/26/35.
Belmont, N. C	Coventry, R. I	do	2/2/35.
Do	Providence, R. I	do	10/4/34.
Do	Woonsocket, R. I	do	10/4/34.
Cherryville, N. C	Pawtucket, R. I	Warps cotton yarn	1/5/35.
Lincolnton, N. C	do	Cotton Yarn	4/17/35.
Belmont, N. C	Easthampton, Mass	do	2/4/35.
Do	Danielson, Conn	do	5/2/35.
Do	Stonington, Conn	do	1/2/35.
Cherryville, N. C	New York, N. Y	do	11/7/34, 11/15/34, 1/4/35, 1/15/35, 1/17/35, 2/16/35, 2/21/35, 5/29/35, 5/30/35, 5/31/35.
Do	Newburgh, N. Y	do	3/20/35.
High Point, N. C	New York, N. Y	do	5/4/35.
Marion, N. C	do	do	5/17/35.
Maiden, N. C	Brooklyn, N. Y	do	10/16/34, 10/17/34.
Do	Clark Mills, N. Y	do	5/7/35.
Lincolnton, N. C	New York, N. Y	do	4/3/35, 3/16/35.
Salisbury, N. C	do	do	9/27/34.
Taylorsville, N. C	Brooklyn, N. Y	do	2/27/35.
Belmont, N. C	Allentown, Pa	do	11/4/34.
Do	Chester, Pa	do	5/24/35.
Do	Philadelphia, Pa	do	5/3/35.
Do	York, Pa	do	5/3/35.

Exhibit No. 1—Witness Beam—Continued

From—	To—	Commodity	Date
Cherryville, N. C	Chester, Pa	Cotton Yarn	10/13/34, 11/3/34, 2/7/35, 2/9/35, 2/16/35, 2/20/35, 3/2/35.
Do	Philadelphia, Pa	do	9/29/34, 10/13/34, 1/5/35, 2/16/35, 5/31/35.
Do	Phoenixville, Pa	do	12/8/34.
Do	Pottstown, Pa	do	11/2/34.
Do	Reading, Pa	Cotton yarn on tubes	11/16/34.
Do	Scranton, Pa	do	12/13/34.
Gastonia, N. C	Allentown, Pa	do	12/21/34.
Do	Chester, Pa	do	5/15/35.
Greensboro, N. C	do	do	12/11/34.
Hickory, N. C	Philadelphia, Pa	do	5/4/35.
Kings Mountain, N. C	Conchohocken, Pa	do	1/10/35.
Do	Philadelphia, Pa	do	1/7/35.
Do	Pittsburgh, Pa	do	1/11/35.
Do	Wilkes-Barre, Pa	do	10/23/34.
Lincolnton, N. C	Philadelphia, Pa	do	5/8/35.
Malden, N. C	Clifton Heights, Pa	do	3/12/35.
Do	Columbia, Pa	do	1/17/35.
289 Do	Conshohocken, Pa	Cotton Yarn	10/30/35.
Marion, N. C	Chester, Pa	do	5/15/35.
Rockwell, N. C	Philadelphia, Pa	do	12/17/34.
Salisbury, N. C	Allentown, Pa	do	11/7/34, 1/1/36.
Do	Easton, Pa	do	1/2/35.
Do	Gilbertsville, Pa	do	1/1/35.
Do	Hamburg, Pa	do	12/8/34.
Do	Chester, Pa	do	1/1/35.
Do	Millersburg, Pa	do	10/22/34.
Do	Spring City, Pa	do	12/5/34.
Belmont, N. C	Philadelphia, Pa	do	1/30/35.
Stanley, N. C	do	do	5/21/35.
Taylorsville, N. C	Allentown, Pa	do	1/1/35.
Do	Ashland, Pa	do	1/2/35, 1/4/35, 1/18/35.
Do	Boyertown, Pa	do	11/13/34, 11/16/34, 11/22/34.
Do	Clifton Heights, Pa	do	11/28/34, 11/26/34, 12/5/34, 12/8/34, 12/12/34.
Do	Gilbertsville, Pa	do	1/12/35.
Do	Millersburg, Pa	do	1/18/35.
Do	Philadelphia, Pa	do	1/1/35, 2/5/35.
Do	Phoenixville, Pa	do	11/30/34, 11/23/34, 12/5/34, 11/10/35.
Do	Pottstown, Pa	do	11/23/34, 11/28/34, 1/6/35.
Do	Schuylkill Haven, Pa	do	1/18/35.
Do	Stowe, Pa	do	11/16/34, 11/23/34, 12/8/34, 12/12/34, 11/3/35, 4/16/35.
Thomasville, N. C	Chester, Pa	do	2/20/34.
Cherryville, N. C	Bloomfield, N. J	do	3/16/35, 3/20/35, 3/22/35, 3/30/35.
Do	Jersey City, N. J	do	3/16/35, 3/20/35, 4/12/35.
Do	Newark, N. J	do	4/3/35, 4/6/35, 4/10/35 4/20/35, 5/4/35, 5/8/35, 5/15/35, 5/18/35, 5/22/35.
Do	Somerville, N. J	do	11/16/34, 11/22/34, 11/30/34, 12/7/34, 1/12/35, 1/19/35, 2/2/35, 3/14/35, 3/20/35, 4/11/35, 4/20/35, 5/4/35, 5/8/35, 5/17/35.
Do	Union City, N. J	Lisle Tw. Cones and Cotton Yarn.	11/17/34, 11/24/34, 11/30/34, 12/12/34, 12/29/34, 1/12/35 1/19/35, 1/26/35, 2/22/35, 2/23/35, 3/2/35, 3/23/35, 4/3/35, 4/10/35, 4/20/35, 4/30/35, 5/18/35.
Do	Brooklyn, N. Y	Cotton Yarn	4/27/35, 4/24/35.
Do	New York, N. Y	Skeins	11/15/34, 11/16/34.
Do	do	Bleached Cones	11/15/34, 12/15/34.
Do	do	Cotton Yarn	11/21/34, 11/30/34.
Do	do	Cones Natural	11/30/34.
Do	do	Skeins	12/5/34.
Do	do	Cotton Yarn	12/8/34, 12/12/34, 12/18/34, 12/22/34, 12/31/34, 1/5/35, 1/9/35, 1/11/35, 1/19/35, 1/23/35, 1/30/35, 2/2/35, 2/6/35, 2/8/35, 2/9/35, 2/12/35, 2/23/35, 2/27/35, 3/2/35, 3/6/35.

Exhibit No. 1—Witness Beam—Continued

From—	To—	Commodity	Date
290 Cherryville, N.C.	New York, N. Y.	Cotton Yarn	3/9/35, 3/13/35, 3/16/35, 3/20/35, 3/27/35, 3/29/35, 4/3/35, 4/5/35, 4/10/35, 4/12/35, 4/17/35, 4/20/35, 4/24/35, 4/30/35, 5/2/35, 5/8/35, 5/14/35, 5/18/35, 5/29/35.
Do	Allentown, Pa	do	2/37/35.
Do	Chester, Pa	Cotton Yarn Skeins	8/26/33, 9/1/33, 8/31/33, 9/9/33, 9/16/33, 9/21/33, 9/30/33.
Do	do	Warps Gassed	10/7/33, 10/13/33, 10/20/33, 10/28/33, 10/31/33, 11/7/33, 11/18/33, 12/9/33, 12/16/33, 12/8/34, 12/9/34, 2/22/35.
Do	do	Cotton Yarn	4/17/35, 5/18/35.
Do	do	Warps	4/20/35.
Do	Clifton Heights, Pa	Warp Tw. Skeins	9/22/33.
Do	Philadelphia, Pa	Cotton Yarn	12/5/34, 12/8/34, 12/15/34, 12/29/34, 12/31/34, 1/12/35 1/26/35, 1/31/35, 2/2/35, 2/6/35, 2/2/35, 3/9/35, 3/16/35, 3/23/35, 4/10/35, 4/13/35, 4/18/35, 4/27/35, 4/30/35, 5/8/35.
Do	Pottstown, Pa	do	1/26/35, 1/30/35, 2/22/35, 2/27/35, 3/2/35, 3/9/35, 4/3/35, 4/13/35.
Do	Providence, R. I	Warps	4/6/35.
Kings Mountain, N. C.	Lenni, Pa	Cotton Yarn	6/29/35.
Malden, N. C.	Philadelphia, Pa	do	1/1/35.
Lincolnton, N. C.	Washington, D. C.	Cotton Bedspreads	5/16/35.
Cherryville, N. C.	Baltimore, Md	Cotton Yarn	11/16/34.
Malden, N. C.	Elk Mills, Md	do	3/30/35.
Taylorsville, N. C.	Hagerstown, Md	do	2/6/35, 1/6/35.
Kings Mountain, N. C.	Mt. Holly, N. J	do	1/25/35.
Long Shoals, N. C.	do	do	8/26/34.
Malden, N. C.	Paterson, N. J	do	1/4/34, 10/16/34.
Do	South River, N. J	do	9/15/34.
Cherryville, N. C.	Bloomfield, N. J	do	10/11/34.
Do	Bound Brook, N. J	do	10/19/34.
Do	Jersey City, N. J	do	10/13/34, 11/3/34.
Do	Mt. Holly, N. J	do	11/7/34.
Do	Newark, N. J	do	5/4/34, 5/30/35, 5/31/35.
Do	Passaic, N. J	do	5/8/35.
Do	Perth Amboy, N. J	do	10/13/34, 10/15/34.
Do	Somerville, N. J	do	10/6/34, 2/9/35, 2/16/35.
Do	South River, N. J	do	4/26/35.
Do	Trenton, N. J	do	9/29/34.
Do	Union City, N. J	do	1/9/35, 1/12/35, 5/11/35, 5/25/35.
Falls River, Mass.	Cherryville, N. C.	Quiller Machines	3/29/35.
Sewaren, N. J.	Gaffney, S. C.	Pet. Lub. Oils	4/1/35.
Baltimore, Md.	Charlotte, N. C.	Can Corn	6/5/34.
Do	do	Canned Goods	1/13/35, 1/14/35.
Do	Dallas, N. C.	Medicine	6/5/34.
Do	Gastonia, N. C.	Canned Goods	5/30/34.
Jersey City, N. J.	Monroe, N. C.	Storage Batteries	7/25/33, 8/11/33.
Do	Raleigh, N. C.	do	12/10/33.
Paulsboro, N. J.	Monroe, N. C.	Leno Rugs	8/11/33.
291 Sewaren, N. J.	Asheville, N. C.	Pet. products	4/23/35.
291 Do	Asheville, N. C.	Petroleum products	4/23/35.
Do	Burlington, N. C.	do	4/5/35.
Do	Charlotte, N. C.	do	3/29/35.
Do	Durham, N. C.	do	4/5/35.
Do	Hickory, N. C.	do	4/1/35.
Do	Lincolnton, N. C.	do	4/9/35.
Do	Raleigh, N. C.	do	5/2/35.
Do	Salisbury, N. C.	do	5/3/35.
Do	Shelby, N. C.	do	4/2/35.
Do	Wilson, N. C.	do	3/29/35.
New York, N. Y.	Charlotte, N. C.	Paper	10/30/33.
Do	do	Brazil Nuts	10/30/33.

Exhibit No. 1—Witness Beam—Continued

From—	To—	Commodity	Date
Chester, Pa	Albemarle, N. C	Empty Wp. rolls	11/30/34, 12/5/34, 12/20/34.
Do	do	Warp Rolls, empty	3/21/35.
Do	Belmont, N. C	Warp Rolls	9/19/34, 9/24/34, 9/29/34, 10/1/34, 10/31/34.
Do	do	Empty Warp rolls	11/27/34, 1/3/35, 4/29/35, 5/29/35.
Do	Cherryville, N. C	Warps Yarn	10/21/33.
Allentown, Pa	Gastonia, N. C	Cotton Skeins	1/16/35.
Chester, Pa	do	Empty Wp. rolls	11/14/34.
Chester, Pa	do	Warp Rollers	1/16/35.
Do	Kannapolis, N. C	do	1/16/35.
Do	do	Warp rolls, empty	3/4/35.
Do	Rockwell, N. C	Warp rolls	5/25/35.
Do	do	Empty warp rolls	5/20/35.
Do	Salisbury, N. C	do	5/13/35.
Oil City, Pa	Shelby, N. C	Oil	9/15/33.
Lewiston, Pa	Spindale, N. C	Rayon	9/3/34.
Philadelphia, Pa	Valdese, N. C	Machines	1/4/35.
York, Pa	Charlotte, N. C	Roofing	6/17/35.
Do	Monroe, N. C	Wire	5/5/34, 5/20/34, 6/10/34.
Sparrows Point, Md	do	Nails	6/12/34, 6/15/34, 6/19/34.
Baltimore, Md	do	Wire	6/26/34.
Paulsboro, N. J	do	Rugs	7/5/34.
York, Pa	do	Screen Cloth	7/14/34.
Baltimore, Md	Monroe, N. C	Enamelware	7/24/34.
Jersey City, N. J	do	Electric Supplies	7/25/34.
Paulsboro, N. J	do	Rugs	7/11/34, 8/31/34, 9/5/34.
Jersey City, N. J	do	Batteries	7/11/34, 10/9/34, 12/11/34.
N. Y	do	Oil	10/9/34.
Baltimore, Md	do	Plumbing supplies	10/23/34.
Paulsboro, N. J	do	Rugs	10/23/34, 8/3/35.
Chester, Pa	Cherryville, N. C	Warp Rolls	5/20/34.
Pottstown, Pa	Salisbury, N. C	Yarn	2/22/34.
Chester, Pa	Belmont, N. C	Warp Rolls	10/1/34, 10/29/34, 11/12/34, 11/27/34, 12/17/34, 3/25/35 4/23/35, 4/12/35, 5/6/35.
Philadelphia, Pa	Cherryville, N. C	Air Compressor	5/14/35.
Chester, Pa	Gastonia, N. C	Warp Rolls	10/1/34, 10/29/34, 11/12/34, 5/6/35, 4/23/35, 3/20/35, 3/26/35, 4.
Do	Lincolnton, N. C	do	12/11/34.
Philadelphia, Pa	Greensboro, N. C	Yarn	12/17/34, 3/26/35, 5/20/35.
Chester, Pa	Rockwell, N. C	Warp Rolls	12/28/34, 1/30/35, 2/4/35, 2/8/35, 3/5/35, 4/12/35, 5/6/35.
Sewaren, N. J	Charlotte, N. C	Pet. Products	1/14/35, 4/18/35.
Do	Wilson, N. C	do	1/30/35, 4/29/35.
Do	Burlington, N. C	do	1/30/35, 3/19/35.
Do	Greensboro, N. C	do	2/2/35, 3/12/35.
Do	Spartanburg, S. C	do	2/4/35, 4/1/35, 4/22/35.
392 Do	Hickory, N. C	do	2/4/35, 3/22/35.
Do	Sanford, N. C	do	2/8/35.
Do	Leaksville, N. C	do	2/25/35.
Do	Statesville, N. C	do	2/25/35.
Do	Salisbury, N. C	do	3/22/35.
Do	Raleigh, N. C	do	5/8/35, 4/9/35.
Do	Lincolnton, N. C	do	4/18/35.
Do	Spring Hope, N. C	do	4/18/35.
Do	Pine Tops, N. C	do	4/23/35.
Do	Biltmore, N. C	do	1/11/35, 2/4/35, 4/16/35.
Chester, Pa	Albemarle, N. C	Warp Rolls	1/21/35.
Clifton Heights, Pa	Belmont, N. C	Warps	2/20/35, 2/4/35.
Chester, Pa	Thomasville, N. C	Warp Rolls	5/13/35.
Do	Salisbury, N. C	do	3/4/35.
Do	Kannapolis, N. C	do	3/4/35, 2/11/35, 4/3/35, 5/3/35.
York, Pa	Vale, N. C	Roofing	5/14/35, 2/.4/35.
Do	Lincolnton, N. C	do	4/23/35.
Do	Forest City, N. C	do	3/9/35.
Do	Durham, N. C	do	6/3/35.
Philadelphia, Pa	Belmont, N. C	Warps	2/12/34, 4/3/35.
Salisbury, N. C	Stowe, Pa	Yarn	10/25/34, 11/2/34, 11/12/34, 12/7/34, 1/14/35.
Gastonia, N. C	Chester, Pa	do	4/19/35.
Do	Clifton Heights, Pa	do	2/14/35, 5/10/35.
Belmont, N. C	Reading, Pa	do	3/22/35.
Do	Riverside, N. J	do	12/15/34, 12/22/34.
Do	Beverly, N. J	do	12/15/34.
Bessemer City, N. C	do	do	

Exhibit No. 1—Witness Beam—Continued

From—	To—	Commodity	Date
Taylorsville, N. C.	Reading, Pa.	Yarn	2/13/35, 3/15/35.
Lincolnton, N. C.	Clifton Heights, Pa.	Warp Rolls	1/19/35, 2/22/35, 1/14/38.
Marion, N. C.	Philadelphia, Pa.	Yarn	5/8/35.
Lincolnton, N. C.	Reading, Pa.	do	5/3/35.
Do	Allentown, Pa.	do	5/3/35.
Ranlo, N. C.	Chester, Pa.	do	5/23/35.
Salisbury, N. C.	Mohnton, Pa.	do	3/9/35.
Do	Clifton Heights, Pa.	do	4/27/35.
Do	Carlton, Pa.	do	5/9/35, 4/24/35.
Do	Schylkill Haven, Pa.	do	4/12/35.
Do	Pottstown, Pa.	do	4/12/35, 4/19/35.
Do	Union City, N. J.	do	4/17/35, 4/20/35.
Marion, N. C.	Allentown, Pa.	Cotton Yarn	6/28/35, 6/22/35, 6/28,35, 7/3/35, 7/12/35, 7/17/35.
Do	Auburn, Pa.	do	6/12/35.
Do	Hagerstown, Md.	do	7/17/35.
Do	Hamburg, Pa.	do	6/12/35, 6/15/35, 6/22/35, 6/28/35, 7/12/35, 7/17/35.
Do	Leesport, Pa.	do	7/10/35.
Do	New York, N. Y.	do	7/3/35, 7/13/35, 7/17/35.
Do	Phoenixville, Pa.	do	6/12/35, 6/15/35, 6/26/35, 7/12/35, 7/17/35.
Do	Pottstown, Pa.	do	6/15/35, 7/3/35, 7/17/35.
Do	Pottsville, Pa.	do	6/15/35, 7/12/35.
Do	Reading, Pa.	do	6/12/35, 7/12/35.
Do	Royersford, Pa.	do	6/15/35.
Do	Spring City, Pa.	do	6/12/35, 6/15/35, 6/22/35, 6/28/35, 7/3/35, 7/12/35.
Cherryville, N. C.	Bloomfield, N. J.	do	6/8/35, 6/12/35.
Do	New York, N. Y.	do	6/8/35, 6/15/35, 6/22/35, 6/29/35, 7/3/35, 7/13/35.
Do	Chester, Pa.	Warps Gassed	7/13/35, 7/17/35, 7/27/35.
Do	do	Cotton Yarn	7/31/35.
263 Do	do	Warps	8/7/35, 8/10/35, 8/17/35.
Do	do	Cotton Yarn	8/21/35, 8/31/35.
Do	Philadelphia, Pa.	do	6/8/35, 6/12/35, 6/22/35, 6/29/35, 7/3/35, 7/8/35.
Do	Pottstown, Pa.	do	7/8/35, 8/17/35, 8/31/35.
Belmont, N. C.	Allentown, Pa.	do	9/23/35, 10/11/35.
Taylorsville, N. C.	do	do	10/18/35, 11/13/35, 8/28/36.
Salisbury, N. C.	do	do	12/7/35.
Taylorsville, N. C.	do	do	12/12/36, 12/31/36, 1/16/37.
Do	Ashland, Pa.	do	9/25/35.
Salisbury, N. C.	Bethlehem, Pa.	do	7/29/36.
Belmont, N. C.	Cheltenham, Pa.	do	9/25/35.
Ranlo, N. C.	Chester, Pa.	do	11/1/35, 11/13/35, 4/1/36.
Salisbury, N. C.	do	Warps	12/14/35.
Gastonia, N. C.	do	Cotton Yarn	1/17/36.
Cherryville, N. C.	do	Warps	7/22/36, 10/10/36.
Ranlo, N. C.	do	Cotton Yarn	7/22/36, 2/8/37.
Salisbury, N. C.	do	do	8/22/36.
Cherryville, N. C.	do	do	10/30/36, 1/1/37, 2/12/37.
Long Shoals, N. C.	do	do	2/3/37.
Malden, N. C.	Clifton Heights, Pa.	do	10/16/35.
Cherryville, N. C.	Easton, Pa.	do	9/3/36.
Malden, N. C.	do	do	1/8/37.
Taylorsville, N. C.	Gilbertsville, Pa.	do	12/16/36, 12/31/36, 2/24/37.
Malden, N. C.	Columbia, Pa.	do	9/3/36, 11/20/36.
Lincolnton, N. C.	Conshohocken, Pa.	do	11/20/36.
Taylorsville, N. C.	Girardville, Pa.	do	11/28/36.
Do	Mohnton, Pa.	do	1/17/36, 12/12/36, 2/27/37.
Do	New Ringwold, Pa.	do	9/25/35.
Cherryville, N. C.	Northampton, Mass.	do	1/16/37, 2/8/37.
Kings Mountain, N. C.	Kensington Dist., Philadelphia, Pa.	do	8/10/35.
Long Shoals, N. C.	Philadelphia, Pa.	do	9/26/35, 9/28/35.
Cherryville, N. C.	do	do	9/28/35, 6/27/36, 7/24/36.
Belmont, N. C.	do	do	9/28/35, 10/25/35.
Kings Mountain, N. C.	do	do	9/28/35.
Malden, N. C.	do	do	10/30/35, 11/23/35.
Statesville, N. C.	do	do	11/20/35.
Salisbury, N. C.	do	do	7/8/36, 8/22/36.
Long Shoals, N. C.	do	do	9/16/36.
Taylorsville, N. C.	do	do	12/12/36, 12/31/36, 2/20/37.
Kings Mountain, N. C.	do	do	2/26/37.
Cherryville, N. C.	do	do	12/15/36, 9/3/36, 1/1/37, 2/10/37.

Exhibit No. 1—Witness Beam—Continued

From—	To—.	Commodity	Date
Taylorsville, N. C	Phoenixville, Pa	Cotton Yarn	12/31/36, 1/6/37, 2/20/37.
Cherryville, N. C	Pottstown, Pa	do	9/25/35, 10/13/35, 10/14/36, 11/14/36, 1/16/37.
Lincolnton, N. C	do	do	9/27/35.
Taylorsville, N. C	do	do	10/30/35, 11/10/35, 1/6/36, 7/15/36, 7/24/36, 8/7/36, 12/16/36, 12/30/36, 1/16/37, 2/27/37.
Statesville, N. C	do	do	1/10/36.
Belmont, N. C	Reading, Pa	do	9/25/35, 10/10/35.
Cherryville, N. C	do	do	12/12/36.
Lincolnton, N. C	do	Cotton Bedspreads	10/30/35.
Maiden, N. C	do	Cotton Yarn	1/18/36, 7/29/36, 9/5/36.
Salisbury, N. C	Royersford, Pa	do	7/29/36.
294 Belmont, N. C	Scranton, N. C	do	9/21/35.
Cherryville, N.C	do	Textile Machinery	9/27/37.
Taylorsville, N. C	Spring City, Pa	Cotton Yarn	9/28/35, 10/30/35, 9/11/36.
Do	Stowe, Pa	do	9/25/35, 10/30/35, 11/15/35, 1/8/36, 7/24/36, 11/14/36, 2/10/37.
Kings Mountain, N. C	Wilkes-Barre, Pa	do	9/21/35.
Taylorsville, N. C	Hagerstown, Md	do	11/27/36.
Kings Mountain, N. C	Elk Mills, Md	do	11/30/35.
Maiden, N. C	Bound Brook, N. J	do	10/10/36.
Long Shoals, N. C	do	do	12/5/36, 12/9/36, 2/3/37.
Belmont, N. C	Hillside, N. J	do	9/25/35.
Cherryville, N. C	Jersey City, N. J	do	12/30/36, 1/30/37.
Kings Mountain, N. C	Mount Holly, N. J	do	6/30/36, 7/22/36, 8/22/36, 2/18/37.
Maiden, N. C	do	do	12/18/36.
Lincolnton, N. C	Newark, N. J	do	9/25/35, 11/20/35.
Gastonia, N. C	do	Empty cases (bottles) and kegs.	4/27/36.
Cherryville, N. C	do	Cotton Yarn	8/8/36, 8/26/36, 9/4/36, 12/30/36.
Do	Passaic, N. J	do	7/11/36, 8/18/36.
Belmont, N. C	Paterson, N. J	do	9/28/35.
Maiden, N. C	do	do	7/2/36, 12/16/36, 12/31/36.
Belmont, N. C	Perth Amboy, N. J	do	9/27/35.
Cherryville, N. C	do	do	9/25/36, 10/28/36, 11/25/36, 2/25/37.
Belmont, N. C	Riverside, N. J	do	9/27/35.
Cherryville, N. C	Somerville, N. J	do	9/21/35, 9/28/35, 10/4/35, 6/6/36, 1/2/37, 2/20/37.
Kings Mountain, N. C	Philadelphia, Pa	do	6/29/35.
Maiden, N. C	Trenton, N. J	do	7/8/36.
Cherryville, N. C	Union, N. J	do	9/28/35.
Do	Union City, N. J	do	10/5/35, 11/20/35.
Taylorsville, N. C	West New York, N. J	do	11/28/36, 2/26/37.
Belmont, N. C	Boston, Mass	do	9/20/35, 9/25/35.
Do	Easthampton, Mass	do	9/27/35.
Do	Franklin, Mass	do	9/27/35.
Do	Rockland, Mass	do	9/27/35.
Do	Shirley, Mass	do	9/27/35.
Do	Worcester, Mass	do	9/27/35.
Do	Danielson, Conn	do	9/28/35.
Do	Bridgeport, Conn	do	9/19/35, 9/25/35.
Do	Middletown, Conn	do	9/25/35.
Do	Norwich, Conn	do	9/4/35.
Do	Westport, Conn	do	9/20/35.
Maiden, N. C	Patchague, N. Y	do	2/24/37.
Do	Flushing, L. I., N. Y	do	11/13/36, 11/24/37.
Lincolnton, N. C	Fonda, N. Y	do	8/10/35.
Belmont, N. C	Long Island City, N. Y	do	9/18/35, 9/28/35.
Taylorsville, N. C	do	do	2/27/37.
Do	Brooklyn, N. Y	do	9/27/35.
Kings Mountain, N. C	do	do	9/28/35.
Marion, N. C	New York, N. Y	do	8/28/35.
Cherryville, N. C	do	do	8/28/35, 9/28/35.
Lincolnton, N. C	do	do	8/30/35.
Belmont, N. C	do	do	9/28/35, 10/21/35.
Salisbury, N. C	do	do	9/28/35.
Cherryville, N. C	do	do	9/28/35, 10/28/35, 10/30/35, 1/16/37, 2/27/37.
Lincolnton, N. C	do	do	10/30/35.
Gastonia, N. C	do	Magazine Creels	11/9/35.

Exhibit No. 1—Witness Beam—Continued

From—	To—	Commodity	Date
Taylorsville, N. C.	New York, N. Y.	Cotton Yarn	12/12/36, 12/31/36, 2/13/37.
Kings Mountain N. C.	Providence, R. I.	do	9/21/35.
295 Belmont, N. C.	do	do	9/20/35, 9/25/35, 9/27/35.
Do	Valley Falls, R. I.	do	9/18/35, 9/28/35.
Do	West Warwick, R. I.	do	9/25/35.
Do	Woonsocket, R. I.	do	9/27/35.
Baltimore, Md.	Charlotte, N. C.	Canned Goods	1/14/36.
Do	Lincolnton, N. C.	do	1/14/36.
Do	Shelby, N. C.	Cases sifted Peas	2/28/36.
Do	Gastonia, N. C.	Canned Veg.	2/13/36.
Newark, N. J.	do	Beer	1/18/36, 2/14/36, 2/29/36, 9/14/35.
Do	Raleigh, N. C.	Bundles Steel	1/4/36.
Do	Wadesboro, N. C.	Beer	5/30/36, 6/2/36.
Sewaren, N. J.	Lumberton, N. C.	Pet. Products	1/7/36.
Do	Lincolnton, N. C.	do	12/19/35.
Do	Biltmore, N. C.	do	12/13/35.
Do	Wilson, N. C.	do	12/16/35.
Do	Sanford, N. C.	do	12/19/35.
Do	Salisbury, N. C.	do	3/17/36.
Do	Durham, N. C.	do	3/24/36.
Do	Statesville, N. C.	do	3/24/36.
Do	Hickory, N. C.	do	2/4/36, 1/13/36.
Do	Greensboro, N. C.	do	12/2/35, 1/19/37.
Do	Lincolnton, N. C.	do	2/15/37.
Do	Burlington, N. C.	do	12/10/35, 3/20/36.
Do	Spruce Pine, N. C.	do	1/15/36, 3/31/36.
Do	Dillsboro, N. C.	do	3/30/36.
Do	Wilmington, N. C.	do	1/18/37, 2/2/37.
Do	Winston-Salem, N. C.	do	2/2/37.
Do	Charlotte, N. C.	do	12/28/35, 3/27/36.
Do	Leaksville, N. C.	do	9/25/35.
Do	Raleigh, N. C.	do	9/20/35.
Chester, Pa.	Burlington, N. C.	Cotton Yarn	1/10/36.
Do	China Grove, N. C.	Old Warp Beams	1/3/36.
Do	Cramerton, N. C.	Cotton Yarn	12/13/35.
Do	Greensboro, N. C.	do	1/10/36.
Do	Lincolnton, N. C.	Old Warp Beams	3/20/36.
Do	Valdese, N. C.	Cotton Yarn	2/12/36.
Do	Albemarle, N. C.	Empty Warp Rolls	2/4/36, 2/24/36, 3/20/36, 10/10/36, 11/2/36.
Do	Cherryville, N. C.	Cotton Yarn	11/5/35.
Do	do	Empty Warp Rolls	3/20/36, 6/16/36, 10/10/36, 1/29/37.
Do	Rockwell, N. C.	do	4/10/36, 6/16/36, 11/29/36.
Do	Morganton, N. C.	Cotton Yarn	12/20/35, 2/12/36.
Do	Gastonia, N. C.	Empty Warp Rolls	12/16/35, 12/20/35, 1/6/36, 7/7/36, 8/18/36, 10/10/36, 1/20/37.
Do	Ranlo, N. C.	do	12/16/35, 12/31/35, 1/10/36, 8/11/36, 1/29/37.
Do	Belmont, N. C.	do	12/16/35, 12/20/35, 12/31/35, 1/6/36.
Do	do	Cotton Yarn	1/10/36, 1/17/36, 2/12/36.
Do	do	Empty Warp Rolls	3/20/36, 9/24/36, 11/23/36, 12/29/37.
Temple, Pa.	Raleigh, N. C.	Wet Battery	1/29/37, 8/15/35.
York, Pa.	Bessemer City, N. C.	Roofing	1/27/36.
Do	Charlotte, N. C.	do	1/30/36, 2/3/36, 2/26/36, 11/36, 1/2/37.
Do	Ellenboro, N. C.	do	8/19/36, 2/9/37.
Do	Gastonia, N. C.	do	1/27/36.
Do	Greensboro, N. C.	do	2/3/36.
Do	Henderson, N. C.	do	11/27/36.
Do	Hickory, N. C.	do	5/5/36.
Do	Lincolnton, N. C.	do	1/27/36, 1/31/36, 4/1/36, 9/1/36.
296 Do	Longview, N. C.	do	3/20/36.
Do	Mt. Holly, N. C.	do	8/21/36.
Do	Raleigh, N. C.	do	1/2/37.
Do	Vale, N. C.	do	1/31/36, 2/3/36.
Do	Union, S. C.	do	2/14/36.
Do	Vale, N. C.	do	6/19/36, 8/31/36, 9/29/36, 1/26/37.
Do	Winston-Salem, N. C.	do	12/14/36.
Marcus Hook, Pa.	Charlotte, N. C.	Pet. Products	1/29/37.
Do	Raleigh, N. C.	do	1/29/37.

Exhibit No. 1—Witness Beam—Continued

From—	To—	Commodity	Date
Philadelphia, Pa	Burlington, N. C	Merchandise	1/24/36.
Do	Cherryville, N. C	Wt. Stg Batteries	2/4/36.
Do	Hardin, N. C	Cones	12/17/35.
Do	High Point, N. C	Merchandise	1/24/36.
Do	Raleigh, N. C	do	1/29/36.
Do	do	Steel Bars	2/4/36.
Do	Valdese, N. C	Machine	2/24/36.
Do	Thomasville, N. C	Warp Rolls	6/18/35, 7/17/35, 8/13/35.
Chester, Pa	Albemarle, N. C	do	9/17/35.
Do	Kannapolis, N. C	do	9/17/35.
Do	Gastonia, N. C	do	6/6/35, 6/26/35, 7/3/35, 7/17/35, 7/25/35, 7/8/35, 8/22/35, 9/3/35.
New York, N. Y	Cherryville, N. C	Yarn	6/17/35.
Clifton Heights, Pa	Taylorsville, N. C	Warp Rolls	8/12/35.
Sewaren, N. J	Burlington, N. C	Pet. Products	6/10/35.
Do	Hendersonville, N. C	do	8/29/35.
Newark, N. J	Hickory, N. C	Beer	6/3/35, 6/12/35.
Philadelphia, Pa	Belmont, N. C	Cones	7/1/35.
Do	High Point, N. C	do	7/1/35.
Newark, N. J	Wadesboro, N. C	Beer	6/23/35.
York, Pa	Charlotte, N. C	Roofing	6/17/35.
Sewaren, N. J	Gaffney, S. C	Pet. Products	2/4/35, 4/1/35.
Do	Florence, S. C	do	4/8/35, 4/6/35.
Do	Greenville, S. C	do	3/25/35.
Do	Spartanburg, S. C	do	1/29/35, 4/8/35, 4/19/35.
Cherryville, N. C	Rock Hill, S. C	Roofing	2/27/36.
Kings Mountain, N. C	Greenville, S. C	Cotton Yarn	8/17/35.
Cly, Pa	Rock Hill, S. C	Roofing	1/30/36.
Marcus Hook, Pa	Greenwood, S. C	Pet. Products	1/9/37.
Philadelphia, Pa	Clover, S. C	Cones	2/27/36.
Do	Rock Hill, S. C	Machine	1/21/36.
Reading, Pa	Gaffney, S. C	Candy	11/28/36.
Sewaren, N. J	do	Pet. Products	2/19/36.
Do	Florence, S. C	do	1/3/36.
Do	Greenville, S. C	do	11/5/35.
Do	Spartanburg, S. C	do	9/6/35, 12/19/35, 1/8/36.
York, Pa	Union, S. C	Roofing	2/14/36.
Do	do	do	2/17/36.
Taylorsville, N. C	Bassett, Va	Cotton Yarn	9/25/36.
Sewaren, N. J	Danville, Va	Pet. Products	11/6/35, 3/30/36, 6/10/36.
Richmond, Va	Gastonia, N. C	Wine	2/12/36.
297 Chester, Pa	Thomasville, N. C	Warp Rolls	6/18/35, 7/17/35, 8/13/35.
Do	Albemarle, N. C	do	9/17/35.
Do	Kannapolis, N. C	do	9/17/35.
Do	Gastonia, N. C	do	6/6/35, 6/26/35, 7/3/35, 7/17/35, 7/25/35, 8/8/35, 8/22/35, 9/3/35.
New York, N. Y	Cherryville, N. C	Yarn	6/17/35.
Clifton Heights, Pa	Taylorsville, N. C	Warp Rolls	8/12/35.
Sewaren, N. J	Burlington, N. C	Pet. Products	6/10/35.
Do	Hendersonville, N. C	do	8/29/35.
Newark, N. J	Hickory, N. C	Beer	6/3/35, 6/12/35.
Philadelphia, Pa	Belmont, N. C	Cones	7/1/35.
Do	High Point, N. C	do	7/1/35.
Newark, N. J	Wadesboro, N. C	Beer	6/23/35.
York, Pa	Charlotte, N. C	Roofing	6/17/35.
Sewaren, N. J	Gaffney, S. C	Pet. Products	2/4/35, 4/1/35.
Do	Florence, S. C	do	4/8/35, 4/6/35.
Do	Greenville, S. C	do	3/25/35.
Do	Spartanburg, S. C	do	1/29/35, 4/8/35, 4/19/35.
Do	Leaksville, N. C	do	2/8/35.
Philadelphia, Pa	Fingerville, S. C	Cones	7/1/35.
Cherryville, N. C	Rock Hill, S. C	Roofing	2/27/36.
Kings Mountain, N. C	Greenville, S. C	Cotton Yarn	8/17/35.
Cly, Pa	Rock Hill, S. C	Roofing	1/30/36.
Marcus Hook, Pa	Greenwood, S. C	Pet. Products	1/9/37.
Philadelphia, Pa	Clover, S. C	Cones	2/27/36.
Do	Rock Hill, S. C	Machine	1/21/36.
Reading, Pa	Gaffney, S. C	Candy	11/28/36.
Sewaren, N. J	do	Pet. Products	2/19/36.
Do	Florence, S. C	do	1/3/36.
Do	Greenville, S. C	do	11/5/35.
Do	Spartanburg, S. C	do	9/6/35, 12/10/35, 1/8/36.
York, Pa	Union, S. C	Roofing	2/14/36.
Do	do	do	2/14/36.
Taylorsville, N. C	Bassett, Va	Cotton Yarn	9/25/36.

Exhibit No. 1—Witness Beam—Continued

From—	To—	Commodity	Date
Sewaren, N. J	Danville, Va	Pet. Products	11/6/35, 3/30/36, 6/10/35.
Richmond, Va	Gastonia, N. C	Wine	2/12/36.
Salisbury, N. C	New Bedford, Mass	Machinery	12/17/35.
Philadelphia, Pa	Belmont, N. C	Cones	12/17/35.
Do	Norwood, N. C	Tubes	12/17/35.
Belmont, N. C	Kearney, N. J	Yarn	9/25/35.
Do	Providence, R. I	do	9/19/35.
Do	Pawtucket, R. I	do	9/19/35.
Do	Easthampton, Mass	do	9/19/35.
Do	Valley Falls, R. I	do	9/4/35.
Temple, Pa	Florence, S. C	Batteries	8/21/35.
Newark, N. J	Gastonia, N. C	Beer	9/14/35.
Sewaren, N. J	Roanoke Rapids, N. C	Pet. Products	11/24/36.
Do	Lumberton, N. C	do	11/2/36.
Do	Hertford, N. C	do	11/23/36.
Do	Fayetteville, N. C	do	11/30/36.
Do	Dillsboro, N. C	do	6/10/36.
Do	Spruce Pine, N. C	do	6/19/36.
Do	Durham, N. C	do	7/28/36.
Do	Burlington, N. C	do	8/7/36.
Do	Raleigh, N. C	do	9/20/35.
Do	Greensboro, N. C	do	2/18/37.
Do	do	do	9/5/36.
Do	Lincolnton, N. C	do	9/8/36.
Do	do	do	2/18/37.
Do	do	do	7/31/36.
298 Do	Lincolnton, N. C	do	3/16/37.
Do	Hickory, N. C	do	7/31/36.
Do	do	do	7/25/36.
Do	Charlotte, N. C	do	2/23/37.
Do	do	do	9/14/36.
Do	Wilson, N. C	do	2/10/36.
Do	do	do	3/9/37.
Do	Wilmington, N. C	do	8/11/36.
Do	do	do	3/9/37.
Do	Winston-Salem, N. C	do	9/2/37.
Do	Florence, S. C	do	11/23/36.
Marcus Hook, Pa	Gaffney, S. C	do	3/30/37.
Norfolk, Va	Charlotte, N. C	Cd Gds	3/1/37.

299 *Exhibit No. 2 (Witness Beam)*

Form I—Copy B

Do not fill in

Registration Certificate No. 200659
N. R. A. Insignia Nos. B6639-42

REGISTRATION

UNDER THE CODE OF FAIR COMPETITION FOR THE TRUCKING INDUSTRY AS APPROVED BY THE PRESIDENT OF THE UNITED STATES UNDER THE NATIONAL INDUSTRIAL RECOVERY ACT

1 Name of Registrant—Mauney Transfer Company. Address—Cherryville, N. C.

2. Total Number of Vehicles Owned and Operated (Excluding Tractors) 4
   (a) Owned and operated by you .....
   (b) Owned by you but operated by others:
      (1) Supplied with driver,
         (x) With maintenance and repair ....
         (y) Without maintenance and repair ....
      (2) Supplied without driver,
         (x) With maintenance and repair ....
         (y) Without maintenance and repair: Total (1) and (2) .....
   (c) Total Vehicles for Which Insignia Required (a) plus (b) 4
   (d) Operated by you but owned by others:
      (1) Supplied with driver,
         (x) With maintenance and repair ....
         (y) Without maintenance and repair ....
      (2) Supplied without driver,
         (x) With maintenance and repair ....
         (y) Without maintenance and repair ... Total (1) and (2) .....

3. (A) Classify Below the Vehicles Operated by You According to Payload Each Vehicle Customarily Carries: (See Instruction Sheet.)

Payload per vehicle (tons)	Trucks		Trailers and semi-trailers		Animal-drawn vehicles	Motor-cycle units	Others	
	Number	Average annual mileage per vehicle	Number	Average annual mileage per vehicle	Number	Number	Number	Description
Under 1 ..... (1)								
1 up to 2 ..... (2)								
2 up to 4 ..... (3)								
4 up to 6 ..... (4)	3	35,000						
6 up to 8 ..... (5)			1	30,000				
8 up to 10 ..... (6)								
10 or over ..... (7)								
Total	3		1					

* The sum of these totals should equal the sum of the vehicles listed under 2 (a) and 2 (d).

(B) Number of Power Units not Included Above:
Tractors .....
Animals .....

4. Nature of Business: Do you operate as (Fill in below. See Instruction Sheet.)

1 Classification (If more than check each)	2 Percentage of revenue from operation in each classification	3 Certificate or permit numbers	4 Intra-State (one State only)	5 Number of vehicles operated interstate	6 States in or through which you operate	7 Approximate percentage of miles travelled annually in each State
☐ Common carrier, over regular route between fixed terminals. (1)					1. N. C.	60%
☐ Common carrier, irregular, or not over fixed routes. (2)					2. Va.	20%
☐ Commodity carriers (as provided by laws of certain States). (3)					3. Md.	5%
☒ Contract carrier, operating under specific contracts. (4)	60%				4. {De. / D. C.	2% / 7%
☒ Anywhere for hrie (Gen. trucking extending beyond municipal limits). (5)	40%		1	3	5. Penn.	4%
☐ City draymen or city cartage. (6)					6. N. J.	4%
☐ Private (not for hire). (7)					7. N. Y.	3%
Total	100%	x x	x x	x x	x x x x	100%

300 5. (A) Type of Goods Carried (indicate opposite each commodity group the approximate percentage of your total gross revenue derived from the transportation of that commodity):

General Merchandise (1) ☐	Wool, Mohair (9) ☐	Lumber and Logging (17) ☐
Groceries (2) ☐	Sugar (9) ☐	Iron and Steel (18) ☐
Farm Products (3) ☐	New Furniture (10) ☐	Petroleum and its
Live Stock (4) ☐	Machinery and Equipment (11) ☐	Products (19) ☐
Milk and Other	Textile Products (12) 90%	Coal and Coke (20) ☐
Dairy Products (5) ☐	Automobiles (13) ☐	Ice (21) ☐
Cotton and Cotton	Tires and Acces-	Sand, Gravel and
Seed Products (8) ☐	sories (14) ☐	Excavations (22) ☐
Fruit and Vegetables (7) ☐	Beverages (15) ☐	Garbage, etc. (23) ☐
	Animal Foodstuffs (16) ☐	Rough Freight (24) 10%

What percentage of your gross revenue is derived from hauling used household goods, used office furniture and/or used office equipment (25) ☐

Total 100%

(B) Do you operate a warehouse for storing used household goods, used office furniture and used office equipment?—No.

(C) Is special equipment required in handling any of the above transportation? If so, describe:—No.

6. Radius of Operation:

(A) Local Cartage—Radius (miles) in which you operate:

If you operate in adjoining cities and/or in several cities, list cities, municipalities and townships:

(B) Normal Maximum Miles Operated (not local cartage)—the one-way distance operated on longest normal run: .....

7. (A) Number of Employees at Date of Registration:

Drivers	4	Terminal and Station Labor	.....
Drivers' Helpers	4	Clerical and Supervisory Employees.	1
Mechanics	1	All Others	.....
Mechanics' Helpers	1		
		Total	11

(B) What was your total wage and salary expense, for the period from July 1, 1932, to June 30, 1933, for:

1. All employees, if you are a "for hire" Registrant. $4,500.00
2. All employees engaged in this Industry, if you are a "not for hire" Registrant
   (a) subject to labor provisions of the Trucking Code ..... $.....
   (b) subject to labor provisions of another Code of Fair Competition ..... $.....

(C) Show below the number of workers other than clerical and supervisory employees engaged in your trucking operations on the 15th, or nearest normal working day nearest the 15th, of the months listed below for the period from July 1, 1932 to June 30, 1933:

	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
For Hire	8	8	8	8	8	8	8	8	8	8	8	8
"Not for hire" subject to this Code												
"Not for hire" subject to Another Code												

I hereby certify that this information above is true and complete.

(Firm) MAUNEY TRANSFER CO., INC.,
By ED. SULLIVAN, Jr.

Date July 11, 1934.

(Submit three signed copies)

301 *Exhibit No. 3 (Witness Griffis)*

STATEMENT SHOWING SHIPMENTS TRANSPORTED BY MAUNEY TRANSFER COMPANY

From—	To—	Commodity	Date
Charlotte, N. C	Harrison, N. J	Asbestos Yarn	7/31/33
Do	do	Empty Wire Cases	7/20/33
Do	Trenton, N. J	Asbestos Tape, Asbestos Cloth and Cotton.	5/18/33
Do	do	Asbestos Cloth, Asbestos Packing	7/20/33
Do	do	Asbestos Cloth and Asbestos Brakelining.	7/12/33
Do	do	do	5/23/33
Do	do	do	6/1/33
Do	do	do	7/3/33
Do	Paterson, N. J	Asbestos Yarn	7/20/33
Do	Philadelphia, Pa	Asbestos Cloth	7/20/33
Do	New York, N. Y	do	7/12/33
Do	Providence, R. I	Asbestos Yarn	7/15/33
Do	Hudson, Mass	do	7/3/33
Do	Middletown, Conn	do	6/27/33

302 *Exhibit No. 4 (Witness Beam)*

Date	Shipper	Consignee
Jan. 2, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Fremont Thread Co., New York, N. Y.
Jan. 2, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	E. L. Thomas Ktg. Mills, Cressona, Pa.
Jan. 6, 1937, Cotton Yarn.	Carolina Mills, Maiden, N. C.	State Reformatory, Rockaway, N. J.
Jan. 6, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Arcadia Ktg. Mills, Allentown, Pa.
Jan. 8, 1937, Cotton Yarn.	Carolina Mills, Maiden, N. C.	Crest Mills, Paterson, N. J.
Jan. 13, 1937, Cotton Yarn.	Long Shoals Cotton Mills, Lincolnton, N. C.	American Velour Mills, Bound Brook, N. J.
Jan. 14, 1937, Cotton Yarn.	Carter Mills No. 1, Lincolnton, N. C.	L. H. Schlesinger, West New York, N. J.
Jan. 16, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Redfern Lace Co., Sommerville, N. J.
Jan. 16, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Jas. E. Reynolds Co., c/o Newark Embroid. Wks., Newark, N. J.
Jan. 20, 1937, Cotton Yarn.	Carolina Mills, c/o Van Gelder Co., Maiden, N. C.	Penna. Plush Weavers, Easton, Pa.
Jan. 23, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Stratford Knitting Mills, Lindfield, Pa.
Jan. 23, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Pinetree Ktg. Mills, New York, N. Y.
Jan. 23, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Lincoln Underwear Mills, Pottstown, Pa.
Jan. 29, 1937, Cotton Yarn.	Carolina Mills, Maiden, N. C.	Baronet Lorna Corp., Long Island N. Y.
Jan. 30, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Novelty Handkerchief Co., Passaic, N. J.
Jan. 30, 1937, Cotton Yarn.	Rudisill Spinning Mills, Lincolnton, N. C.	Filatex Corp., Northampton, N. J.
Feb. 27, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Erntex Ktg. Mills, Gilbertsville, Pa.
Feb. 27, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	United Underwear Mills, Boyertown, Pa.
Feb. 27, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	J. C. Roulette & Son, Hagerstown, Md.
Feb. 27, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Krouse Knitting Mills, Brooklyn, N. Y.
Mar. 9, 1937, Oil	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Co., Wilmington, N. C.
Mar. 11, 1937, Oil	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Caros., Raleigh, N. C.
Mar. 16, 1937, Oil	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Columbia, S. C.
Mar. 16, 1937, Oil	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Co., Lincolnton, N. C.
Mar. 17, 1937, Cotton Yarn.	Aberfoyle Mfg. Co., Chester, Pa.	Sterling Spinning Co., Belmont, N. C.
Mar. 17, 1937, Cotton Yarn.	Carolina Mills, Maiden, N. C.	Crest Mills, Paterson, N. J.
Mar. 17, 1937, Cotton Yarn.	Carolina Mills, c/o Ven Gelder, Maiden, N. C.	Reading Towell Mfg. Co., Reading, Pa.
Mar. 19, 1937, Oil	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Co., Asheville, N. C.
Mar. 19, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Heather Handkerchief Co., Jersey City, N. J.
Mar. 22, 1937, Oil	Standard Oil Co. of N. J., Jersey City N. J.	Standard Oil Co. of N. J. Lincolnton, N. C.
303 Mar. 23, 1937, Canned Goods	Helwig & Leitch, Baltimore, Md.	C. C. Carpenter Co., Shelby, N. C.
Mar. 25, 1937, Cotton Yarn.	Long Shoals Mills, Lincolnton, N. C.	Pawdrell Alexander & Co., Danielson, Conn.
Mar. 31, 1937, Cotton Yarn.	Carter Mills No. 2, Taylorsville, N. C.	Schlesinger & Co., West New York, N. J.
Apr. 2, 1937, Lub. Oil	Standard Oil Co. of N. J., Baltimore, Md.	Standard Oil Co. of N. J., Lincolnton, N. C.
Apr. 5, 1937, Lub. Oil	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Co., Lumberton, N. C.
Apr. 7, 1937, Cotton Yarn.	Carolina Mills, Maiden, N. C.	Patshogue Plymouth Mills, Patshogue, N. Y.
Apr. 8, 1937, Cotton Yarn.	Rudisill Spinning Mills, Lincolnton, N. C.	Clark Thread Co., Newark, N. J.
Apr. 8, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	Colonial Processing Co., Pawtucket, R. I.
Apr. 10, 1 97, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	Clark Thread Co., Bloomfield, N. J.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
Apr. 13, 1937, Cotton Yarn.	Ewing-Thomas Corp., Chester, Pa.	Textiles Inc., Gastonia, N. C.
Apr. 14, 1937, Lub. Oil.	Shell Union Oil Corp., Sewaren, N. J.	Winslow Oil Co., Hertford, N. C.
Apr. 21, 1937, Cotton Yarn.	Carolina Mills, Maiden, N. J.	R. L. Karer Co., Hatfield, Pa.
Apr. 21, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	Filate Corp., Trenton, N. J.
Apr. 24, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	H. Rosenthal Co., Perth Amboy, N. J.
Apr. 26, 1937, Lub. Oil.	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Co., Roanoke Rapids, N. C.
Apr. 27, 1937, Canned Goods.	Circle Foods, Inc., New York, N. Y.	W. M. Rogers, & Co., Charlotte, N. C.
Apr. 28, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Connecticut Lace Works, Norwalk, Conn.
Apr. 30, 1937, Cotton Yarn.	Carolina Mills, % Van Gelder Co., Maiden, N. C.	Standard Terry Mills, Souderton, Pa.
May 3, 1937, Warp Beams.	Ewing Thomas Corp., Chester, Pa.	China Grove Cotton Mills, China Grove, N. C.
May 5, 1937, Lub. Oil.	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Co., Wilson, N. C.
May 5, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Erntex Knitting Mills, Gilbertsville, Pa.
304 May 8, 1937 Cotton Yarn	Rhodes-Whitener Mills, Taylorsville, N. C.	Erntex Knitting Mills, Gilbertsville, Pa.
May 8, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa.
May 10, 1937, Oil.	Standard Oil Co. of N. J., Bayonne, N. J.	Standard Oil Co. of N. J., Goldston, N. C.
May 13, 1937, Chemicals.	E. F. Houghton & Co., Philadelphia, Pa.	Eugene Cross Co., Marion, N. C.
May 14, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Jas. E. Mitchell Co., Philadelphia, Pa.
May 22, 1937, Cotton Yarn.	Carter Mills No. 2, Taylorsville, N. C.	L. H. Schlesinger, West New York, N. Y.
May 26, 1937, Oil.	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Charlotte, N. C.
May 26, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Lincoln Underwear Co., Pottstown, Pa.
May 29, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Scranton Lace Co., Scranton, Pa.
June 1, 1937, Cotton Yarn.	Carter Mills No. 1, Lincolnton, N. C.	Louis Schlesinger, West New York, N. J.
June 5, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Industrial Yarn Corp., New York, N. Y.
June 5, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa.
June 8, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Redfern Lace Works, Sommerville, N. J.
June 12, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Pottstown Knitting Mills, Pottstown, Pa.
June 12, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Kooltex Knitting Mills, Mifflinburg, Pa.
June 19, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Spring City Ktg. Mills, Phoenixville, Pa.
June 22, 1937, Cotton Yarn.	Ewing-Thomas Corp., Chester, Pa.	Carlton Yarn Mills, Cherryville, N. C.
June 23, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	Clark Thread Co., Bloomfield, N. J.
June 26, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Redfern Lace Works, Sommerville, N. J.
June 30, 1937, Cotton Yarn.	Aberfoyle Mfg. Co., Chester, Pa.	Rex Spinning Mills, Ranlo, N. C.
308 July 2, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Hyde-Rakestraw Co., Philadelphia, Pa.
July 7, 1937, Roofing.	Cooper Company, Elizabeth, N. J.	McMillan Lumber Co., Gaffney, S. C.
July 8, 1937, Lub. Oil.	Standard Oil Co. of N. J., Bayonne, N. J.	Standard Oil Co. of N. J., Lincolnton, N. C.
July 10, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa.
July 14, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Levi & Rottenburg, Inc., New York, N. Y.
July 14, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	L. B. Luithlen Dye Works., Philadelphia, Pa.
July 14, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Silkcraft Mills, Paterson, N. J.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
July 16, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Hyde-Rakestraw Co., Philadelphia, Pa.
July 17, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Quaker Lace Co., Philadelphia, Pa.
July 20, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Textile Service Co., Philadelphia, Pa.
July 21, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa
July 24, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Columbia Mills, Inc., Wilkes-Barre, Pa.
July 24, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Levi & Rottenburg, Inc., New York, N. Y.
July 27, 1937, Lub. Oil.	Shell Union Oil Co., Sewaren, N. J.	Quality Oil Co., Winston-Salem, N. C.
July 28, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	Hooker & Sanders, Inc., New York, N. Y.
July 29, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Devon Knitting Mills, Ephrata, Pa.
July 29, 1937, Buttons	Helmar Importing Co., New York, N. Y.	Williams & Shelton, Charlotte, N. C.
July 31, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Scranton Lace Mills, Scranton, Pa.
Aug. 7, 1937, Cotton Yarn.	Ewing-Thomas Corp., Chester, Pa.	Oakboro Cotton Mills, Oakboro, N. C.
306 Aug. 4, 1937, Cot-Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Clarence L. Meyers Co., Philadelphia, Pa.
Aug. 6, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Quaker Lace Co., Philadelphia, Pa.
Aug. 7, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa.
Aug. 10, 1937 Oil	Shell Union Oil Co., Sewaren, N. J.	Quality Oil Co., Winston-Salem, N. C.
Aug. 13, 1937, Cotton Yarn.	Long Shoals Cotton Mills, Lincolnton, N. C.	American Velour Mills, Bound Brook, N. J.
Aug. 14, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	R. C. Swanberg, New York, N. Y.
Aug. 18, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Rockledge Mills, Paterson, N. J.
Aug. 18, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Erntex Knitting Mills, Gilbertsville, Pa.
Aug. 19, 1937, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Cohn-Hall-Marx Co., Paterson, N. J.
Aug. 21, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Atchinson-Harden Co., Passaic, N. J.
Aug. 23, 1937, Oil	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Greensboro, N. C.
Aug. 25, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Leader Thread Co., New York, N. Y.
Aug. 27, 1937, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
Aug. 28, 1937, Roofing	Keystone Roofing Co., York, Pa.	A. C. Lutz, Londale, N. C.
Aug. 30, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Wilkes-Barre Lace Co., Wilkes-Barre, Pa.
Sept. 1, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Newark Textile Dyeing Co., Newark, N. J.
Sept. 1, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Ashland Knitting Mills, Ashland, Pa.
Sept. 3, 1937, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
Sept. 4, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	Fremont Thread Co., New York, N. Y.
Sept. 8, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Wilkes-Barre Lace Co., Wilkes-Barre, Pa.
307 Sept. 7, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Pinetree Knitting Mills, New York, N. Y.
Sept. 9, 1937, Roofing	Cooper Company, Elizabeth, N. J.	McMillan Lumber Co., Gaffney, S. C.
Sept. 10, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	A. J. Bartson, Midland Park, N. J.
Sept. 11, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Kraus Knitting Mills, New York, N. Y.
Sept. 15, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Quality Knitting Co., Stowe, Pa.
Sept. 15, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Quaker Lace Co., Philadelphia, Pa.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
Sept. 15, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Mohnton Knitting Mills, Mohnton, Pa.
Sept. 16, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Ladilabrics Inc., Pawtucket, R. I.
Sept. 17, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Aberfoyle Mfg. Co., Chester, Pa.
Sept. 18, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Fremont Thread Co., New York, N. Y.
Sept. 22, 1937, Cotton Yarn.	Lola Mills, Inc., Stanley, N. C.	A. J. Bartson, Midland Park, N. J.
Sept. 24, 1937, Oil	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Charlotte, N. C.
Sept. 24, 1937, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
Sept. 25, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	The Columbia Mills., Wilkes-Barre, Pa.
Sept. 25, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Erntex Knitting Mills, Gilbertsville, Pa.
Sept. 29, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Quaker Lace Co., Philadelphia, Pa.
Oct. 1, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Erntex Knitting Mills, Gilbertsville, Pa.
Oct. 2, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Pottstown Knitting Mills, Pottstown, Pa.
Oct. 2, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
Oct. 6, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Quaker Lace Co., Philadelphia, Pa.
Oct. 7, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Quality Knitting Co., Stowe, Pa.
308 Oct. 9, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Glick Knitting Mills, Girardville, Pa.
Oct. 9, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	R. C. Swanberg, New York, N. Y.
Oct. 12, 1937, Roofing	Keystone Roofing Co., York, Pa.	E. C. Kluttz, Concord; N. C.
Oct. 12, 1937, Wine	Eastern Wine Corp., New York, N. Y.	Carolina Wine Co., Asheville, N. C.
Oct. 13, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Scranton Lace Co., Scranton, Pa.
Oct. 18, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Levi & Rottenburg, Philadelphia, Pa.
Oct. 19, 1937, Oil	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Columbia, S. C.
Oct. 20, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Quaker Lace Co., Philadelphia, Pa.
Oct. 22, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Aberfoyle Mfg. Co., Chester, Pa.
Oct. 23, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Crown Thread Co., New York, N. Y.
Oct. 26, 1937, Cotton Yarn.	Neely Cotton Mills, York, S. C.	Globe Dye Works, Philadelphia, Pa.
Oct. 27, 1937, Cotton Yarn.	Cherryville Mfg. Co., Cherryville, N. C.	Caledonia Dye Works, Philadelphia, Pa.
Oct. 29, 1937, Warp Beams.	Ewing-Thomas Corp., Chester, Pa.	Cartex Mills, Salisbury, N. C.
Oct. 30, 1937, Cotton Yarn.	Clover Spinning Mills, Clover, S. C.	Deisher Knitting Mills, Kutztown, Pa.
Oct. 30, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Levi & Rottenburg, New York, N. Y.
Nov. 1, 1937, Roofing	Keystone Roofing Co., York, Pa.	Montgomery Ward & Co., Greensboro, N. C.
Nov. 2, 1937, Oil	The Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Greenville, S. C.
Nov. 2, 1937, Cotton Yarn.	Neely Cotton Mills, York, S. C.	Arcadia Ktg. Mills, Allentown, Pa.
Nov. 3, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Scranton Lace Co., Scranton, Pa.
Nov. 3, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Fremont Thread Co., New York, N. Y.
309 Nov. 4, 1937, Cotton Yarn.	Clover Spinning Mills, Clover, S. C.	Arcadia Knitting Mills, Allentown, Pa.
Nov. 6, 1937, Cotton Yarn.	North American Lace Co., Philadelphia, Pa.	Carlton Yarn Mills, Cherryville, N. C.
Nov. 6, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	R. C. Swanberg, New York, N. Y.
Nov. 6, 1937, Cotton Yarn.	Clover Spinning Mills, Clover, S. C.	Arcadia Knitting Mills, Allentown, Pa.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
Nov. 12, 1937, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
Nov. 13, 1937, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Aberfoyle Mfg. Co., Chester, Pa.
Nov. 16, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Flexknit Co., Elizabeth, N. J.
Nov. 17, 1937, Roofing.	Keystone Roofing Co., York, Pa.	Arey Brick & Lumber Co., Salisbury, N. C.
Nov. 17, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa.
Nov. 19, 1937, Cotton Yarn.	Ewing-Thomas Corp., Chester, Pa.	Cannon Mills, Rockwell, N. C.
Nov. 19, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Flexknit Corp., Elizabeth, N. J.
Nov. 20, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Flexknit Corp., Elizabeth, N. J.
Nov. 23, 1937, Alcohol.	U. S. Industrial Alco. Co., Curtis Bay, Md.	The Flowers Co., Hickory, N. C.
Nov. 24, 1937, Cotton Yarn.	Lola Mills, Stanley, N. C.	Flexknit Co., Elizabeth, N. J.
Nov. 26, 1937, Cotton Yarn.	Clover Spinning Mills, Clover, S. C.	Arcadia Knitting Mills, Allentown, Pa.
Nov. 30, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa.
Nov. 30, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	The Columbia Mills, Wilkes-Barre, Pa.
Dec. 1, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Stratford Knitting Mills, Linfield, Pa.
Dec. 2, 1937, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Nazareth Waist Co., Nazareth, Pa.
Dec. 3, 1937, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
310 Dec. 4, 1937, Cotton Yarn.	Rudisill Spinning Mills, Cherryville, N. C.	R. C. Swanberg, New York, N. Y.
Dec. 7, 1937, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Kaye Knitting Mills, New York, N. Y.
Dec. 8, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Levi & Rottenburg, New York, N.Y.
Dec. 10, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Columbia Mills, Wilkes-Barre, Pa.
Dec. 11, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Stratford Knitting Mills, Linfield, Pa.
Dec. 14, 1937, Roofing.	Keystone Roofing Co., York, Pa.	E. B. Morse, Rockingham, N. C.
Dec. 14, 1937, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Codorus Hosiery Co., York, Pa.
Dec. 15, 1937, Oil.	The Pure Oil Co., Marcus Hook, Pa.	The State Highway Commission, Camp Polk, N. C.
Dec. 15, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
Dec. 15, 1937, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Nazareth Waist Co., Nazareth, Pa.
Dec. 18, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Seligman Fabrics, New York, N. Y.
Dec. 18, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Lincoln Underwear Co., Pottstown, Pa.
Dec. 21, 1937, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Codorus Hosiery Mills, York, Pa.
Dec. 22, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Columbia Mills, Wilkes-Barre, Pa.
Dec. 23, 1937, Cotton Yarn.	Long Shoals Cotton Mills, Long Shoals, N. C.	American Velour Mills, Bound Brook, N. J.
Dec. 24, 1937, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
Dec. 28, 1937, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Bashore Knitting Mills, Schuylkill, Haven, Pa.
Dec. 28, 1937, Ale & Beer.	G. Krueger Brewing Co., Newark, N. J.	Orange Crush Bottling Co., Gastonia, N. C.
Dec. 29, 1937, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Mohnton Knitting Mills, Mohnton, Pa.
Dec. 29, 1937, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	H. Rosenthal & Co., Perth Amboy, N. J.
311 Jan. 4, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Codorus Hosiery Co., York, Pa.
Jan. 5, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	H. H. Fessler Co., Orwigsburg, Pa.
Jan. 5, 1938, Cotton Yarn.	Long Shoals Cotton Mills, Lincolnton, N. C.	Caledonia Woolen Mills, Clifton Heights, Pa.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
Jan. 6, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Royal Underwear Co., Reading, Pa.
Jan. 7, 1938, Oil	Sun Oil Co., Marcus Hook, Pa.	Quality Oil Co., Winston-Salem, N. C.
Jan. 7, 1938, Cotton Yarn.	Long Shoals Cotton Mills, Lincolnton, N. C.	Caledonia Woolen Mills, Clifton Heights, Pa.
Jan. 8, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
Jan. 12, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Reynolds Knitting Mills, Norristown, Pa.
Jan. 12, 1938, Cotton, Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Codorus Hosiery Mills, York, Pa.
Jan. 13, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
Jan. 14, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Mohnton Knitting Mills, Mohnton, Pa.
Jan. 15, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	L. B. Luithlen Dye Works, Philadelphia, Pa.
Jan. 18, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Penna. Knitting Mills, Spring Grove, Pa.
Jan. 20, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
Jan. 21, 1938, Oil	Shell Union Oil Co., Sewaren, N. J.	Quality Oil Co., Winston-Salem, N. C.
Jan. 21, 1938, Cotton Yarn.	Lola Mills, Stanley, N. C.	Karo Knitting Fabrics, New York, N. Y.
Jan. 26, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Ashland Knitting Mills, Ashland, Pa.
Jan. 26, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	H. Rosenthal & Co., Perth Amboy, N. J.
Jan. 28, 1938, Cotton Yarn.	Long Shoals Cotton, Mills, Lincolnton, N. C.	Hyde-Rakestraw Co., Philadelphia, Pa.
Jan. 29, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Lisle Mills, Allentown, Pa.
312 Feb. 3, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Flexnit Co., Elizabeth, N. J.
Feb. 4, 1938, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Ontario Dyeing Co., Philadelphia, Pa.
Feb. 5, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	National Thread Co., New York, N. Y.
Feb. 8, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Penna. Knitting Mills, Spring Grove, Pa.
Feb. 10, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Flexnit Fabrics, Elizabeth, N. J.
Feb. 11, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Dreeben & Co., New York, N. Y.
Feb. 12, 1938, Lub. Oil	Shell Union Oil Corp., Sewaren, N. J.	Quality Oil Co., Winston-Salem, N. C.
Feb. 15, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Nazareth Waist Co., Nazareth, Pa.
Feb. 16, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Codorus Hosiery Mills, York, Pa.
Feb. 17, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Pinetree Knitting Mills, New York, N. Y.
Feb. 18, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Walter F. Meck, Schuylkill Haven, Pa.
Feb. 18, 1938, Wire Cloth.	Heilig Bros., York, Pa.	American Hardware Co., Charlotte, N. C.
Feb. 19, 1938, Lub. Oil	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Columbia, S. C.
Feb. 24, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	H. H. Fessler Knitting Co., Orwigsburg, Pa.
Feb. 25, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	I. Tager, New York, N. Y.
Feb. 26, 1938, Lub. Oil	Shell Union Oil Co., Sewaren, N. J.	Quality Oil Co., Winston-Salem, N. C.
Feb. 28, 1938, Roofing	Keystone Roofing Co., York, Pa.	Gibsonville Development Co., Gibsonville, N. C.
Mar. 2, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
Mar. 4, 1938, Warp Beams.	Ewing-Thomas Corp., Chester, Pa.	Cannon Mills, Concord, N. C.
Mar. 5, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Globe Dye Works, Philadelphia, Pa.
Mar. 9, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	John Reuis & Sons., Macungie, Pa.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
Mar. 10, 1938, Lub. Oil.	Pure Oil Co., Marcus Hook, Pa.	Pure Oil Co. of the Carolinas, Columbia, S. C.
Mar. 11, 1938, Batteries	Electric Storage & Baty., Philadelphia, Pa.	Quality Oil Co., Winston-Salem, N. C.
Mar. 12, 1938, Cotton Yarn.	Groves Thread Co., Gastonia, N. C.	Robert P. Miller & Co., Shoemakersville, Pa.
Mar. 14, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Baltic Novelty Co., Long Island City, N. Y.
Mar. 17, 1938, Beer.	G. Krueger Brewing Co., Newark, N. J.	Orange Crush Bottling Co., Gastonia, N. C.
Mar. 18, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	R. C. Gladfelter, York, Pa.
Mar. 19, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Columbia Mills, Wilkes-Barre, Pa.
Mar. 24, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Mohnton Knitting Mills, Mohnton, Pa.
Mar. 26, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Textile Service, Inc., Philadelphia, Pa.
Mar. 30, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Geissler Knitting Mills, Hazleton, Pa.
Mar. 31, 1938, Wire Cloth.	American Wire Fabrics, Mt. Wolf, Pa.	Harris Hardware Co., Washington, N. C.
Apr. 2, 1938, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Kooltex Knitting Mills, Mifflinburg, Pa.
Apr. 4, 1938, Lub. Oil.	Shell Union Oil Corp., Sewaren, N. J.	Shell Union Oil Co., Hickory, N. C.
Apr. 6, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Perfect Thread Co., New York, N. Y.
Apr. 8, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	H. Rosenthal & Co., Perth Amboy, N. J.
Apr. 11, 1938, Cot. Pc. Gds.	D. Kutz Co., New York, N. Y.	Bell-Matthews Co., Cherryville, N. C.
314 April 12, 1938, Cotton Yarn.	Cherryville Mfg. Co., Cherryville, N. C.	Kutztown Textile Mills, Kutztown, Pa.
April 13, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Reynolds Knitting Mills, Norristown, Pa.
April 16, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	H. L. Miller & Sons, Port Carbon, Pa.
April 19, 1938, Cotton Yarn.	Cherryville Mfg. Co., Cherryville, N. C.	Kutztown Te. ' Mills, Kutztown, Pa.
April 20, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Penna. Knitting Mills, Spring Grove, Pa.
April 21, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Arcadia Knitting Mills, Allentown, Pa.
April 22, 1938, Cotton Yarn.	Long Shoals Cotton Mills, Lincolnton, N. C.	United Shipping Corp., New York, N. Y.
April 26, 1938, Cotton Yarn.	Cherryville Mfg. Co., Cherryville, N. C.	Kutztown Textile Mills, Kutztown, Pa.
April 27, 1938, Cotton Yarn.	Rudisill Spinning Mills, Lincolnton, N. C.	Goldin Bros., New York, N. Y.
April 28, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
April 29, 1938, Oil.	Shell Union Oil Corp., Sewaren, N. J.	Shell Union Oil Corp., Charlotte, N. C.
May 2, 1938, Oil.	Shell Union Oil Corp., Sewaren, N. J.	Quality Oil Co., Winston-Salem, N. C.
May 3, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Thos. D. Toy & Co., New York, N. Y.
May 4, 1938, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Mohnton Knitting Mills, Mohnton, Pa.
May 5, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Arcadia Knitting Mills, Allentown, Pa.
May 6, 1938, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Halliwell Co., Pawtucket, R. I.
May 7, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia.
May 10, 1938, Cotton Yarn.	Carter Mills, Lincolnton, N. C.	Rohrer Mfg. Co., Allentown, Pa.
May 11, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	R. C. Gladfelter, York, Pa.
May 13, 1938, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Triangle Thread Mills, New York, N. Y.
315 May 14, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Sesom Knitting Mills, New York, N. Y.
May 16, 1938, Cotton Yarn.	Rudisill Spinning Mills, Lincolnton, N. C.	Textile Service Corp., Philadelphia, Pa.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
May 17, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Royal Underwear Co., Reading, Pa.
May 17, 1938, Oil	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Corp., Greensboro, N. C.
May 18, 1938, Oil	Shell Union Oil Co., Sewaren, N. J.	Shell Union Oil Corp., Charlotte, N. C.
May 18, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Royal Underwear Co., Reading, Pa.
May 18, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Walter F. Meck Co., Schuylkill Haven, Pa.
May 19, 1938, Line. Rugs.	Bird & Son, Inc., East Walpole, Mass.	Peerless Mattress Co., Lexington, N. C.
May 20, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Dreeben & Co., New York, N. Y.
May 21, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Jacob Boltz Knitting Mills, Pottsville, Pa.
May 24, 1938, Ale & Beer.	G. Krueger Brewing Co., Newark, N. J.	Orange Crush Bottling Co., Gastonia, N. C.
May 25, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Quaker Lace Co., Philadelphia, Pa.
May 26, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Hagerstown Transfer & Sto., Co., town, Md.
May 27, 1938, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	Glick Knitting Mills, Giradville, Pa.
May 27, 1938, Oil	Crew Levick Co., Philadelphia, Pa.	Acme Petroleum & Fuel Co., Gastonia, N. C.
May 28, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Reidler Knitting Mills, Hazleton, Pa.
May 28, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	H. H. Fessler Co., Orwigsburg, Pa.
May 31, 1938, Shoes	Bronx Shoe Co., New York, N. Y.	Belk-Matthews Co., Cherryville, N. C.
June 1, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	H. Rosenthal & Co., Perth Amboy, N. J.
June 2, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Royal Underwear Co., Reading, Pa.
316 June 4, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Aberfoyle Mfg. Co., Chester, Pa.
June 6, 1938, Cotton Yarn.	Plymouth Thd. & Rayon Co., New York, N. Y.	Howell Mfg. Co., Cherryville, N. C.
June 6, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Meyer & Rasmussen, New York, N. Y.
June 8, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Ontario Dyeing Co., Philadelphia, Pa.
June 10, 1938, Cotton Yarn.	Long Shoal Cotton Mills, Lincolnton, N. C.	Ontario Dye Works, Philadelphia, Pa.
June 11, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Quaker Fabrics, Lebanon, Pa.
June 13, 1938, Cot. Pc. Gds.	Bernard Bernstein Tex Co., Greenville, S. C.	Banner Undergarment, New York, N. Y.
June 14, 1938, Line. Rugs.	Bird & Son, Inc., East Walpole, Mass.	Peerless Mattress Co., Lexington, N. C.
June 15, 1938, Cot. Pc. Gds.	Springs Cotton Mills, Chester, Pa.	Pond Lily Co., New Haven, Conn.
June 16, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
June 17, 1938, Drugs	Purex Products, Inc., Baltimore, Md.	Charlotte Distributing Co., Charlotte, N. C.
June 17, 1938, Cotton Yarn.	Terminal Warehouse Co., Providence, R. I.	Wm. H. Hall Co., Belmont, N. C.
June 18, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Wertz Warehouse Co., Reading, Pa.
June 18, 1938, Cotton Yarn.	Bonnie Cotton Mills, Kings Mountain, N. C.	H. C. Jones Co., Conshohocken, Pa.
June 18, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Fish-Net & Twine Co., Jersey City, N. J.
June 20, 1938, Rayon	Hughes-Fawcett, Inc., New York, N. Y.	Ranlo Mfg. Co., Gastonia, N. C.
June 20, 1938, Drugs	Purex Products, Inc., Baltimore, Md.	I. M. Koger & Co., Charleston, S. C.
June 21, 1938, Dry Goods.	Cohn-Hall-Marx Co., New York, N. Y.	Belk Matthews, Belmont, N. C.
June 21, 1938, Auto. Parts.	Sta-Brite Industries, New Brunswick, N. J.	Anderson Auto Parts Co., Anderson, S. C.
June 22, 1938, Cot. Pc. Gds.	Turner Halsey Co., Greenwood, S. C.	Pond Lily Co., New Haven, Conn.

Exhibit No. 4 (Witness Beam)—Continued

	Date	Shipper	Consignee
317	June 24, 1938, Cotton Yarn.	Long Shoals Cotton Mills, Lincolnton, N. C.	American Velour Mills, Bound Brook, N. J.
	June 25, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Ewing-Thomas Corp., Chester, Pa.
	June 28, 1938, Cotton Yar.	Ranlo Mfg. Co., Gastonia, N. C.	Globe Mills, Inc., West Leesport, Pa.
	June 29, 1938, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Aberfoyle Mfg. Co., Chester, Pa.
	June 30, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	Clarence L. Meyers, Philadelphia, Pa.
	July 2, 1938, Cotton Yarn.	Rhodes-Whitener Mills, Taylorsville, N. C.	H. L. Miller & Son, Port Carbon, Pa.
	July 5, 1938, Cotton Piece Goods.	Anderson Cotton Mills, Anderson, S. C.	Jewett City, Tex. Novelty Co., Jewett City, Conn.
	July 6, 1938, Lino. Pdts.	Bird & Son, Inc., East Walpole, Mass.	Carolina Wholesale Co., Columbia, S. C.
	July 6, 1938, Batteries.	The Ele. Storage Battery Co., Crescentville, Pa.	Quality Oil Co., Winston-Salem, N. C.
	July 6, 1938, Cotton Piece Gds.	Union-Buffalo Mills, Union, S. C.	Pontiac Finishing Co., Pontiac, R. I.
	July 7, 1938, Rayon Fibre.	Hughes Fawcett, New York, N. Y.	Spartex Mills, Tucapau, S. C.
	July 7, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Reidler Knitting Mills, Hazleton, Pa.
	July 8, 1938, Cotton Yarn.	Rhyne-Houser Mfg. Co., Cherryville, N. C.	J. Sullivan & Son, Philadelphia, Pa.
	July 9, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	J. H. Rohrer Co., New Ringgold, Pa.
	July 9, 1938, Paint.	Pittsburgh Plate Glass Co., Newark, N. J.	Pittsburgh Plate Glass Co., Charlotte, N. C.
	July 13, 1938, Cotton Piece Gds.	Abbeville Mills, Abbeville, S. C.	Hohokus Bleachery, Hohokus, N. J.
	July 14, 1938, Cotton Piece Gds.	The Springs Cotton Mills, Lancaster, S. C.	Pond Lily Co., New Haven, Conn.
	July 15, 1938, Cotton Piece Gds.	Victor Monaghan Co., Greer, S. C.	Llondale Bleachery, Rockaway, N. J.
	July 15, 1938, Copper Wire.	Phelps-Dodge Copper Corp., New York, N. Y.	Southern Asbestos Co., Charlotte, N. C.
	July 15, 1938, Cotton Yarn.	Long Shoals Cotton Mills, Lincolnton, N. C.	H. C. Jones Co., Conshohocken, Pa.
318	July 16, 1938, Cot. Pc. Gds.	Bernard Bernstein, Hartsville, S. C.	Borgenight & Spiro, New York, N. Y.
	July 18, 1938, Paper Products.	Lily Tulip Cup Corp., New York, N. Y.	McNeil Paper Co., Charlotte, N. C.
	July 19, 1938, Rayon.	Ranlo Mfg. Co., Gastonia, N. C.	Baldwin Mfg. Co., Elk Mills, Md.
	July 19, 1938, Beer.	G. Krueger Brewing Co., Newark, N. J.	Orange Crush Bottling Co., Gastonia, N. C.
	July 20, 1938, Cot. Pc. Gds.	Bernard Bernstein, Lancaster, S. C.	Slatersville Finishing Co., Slatersville, R. I.
	July 22, 1938, Cot. Pc. Gds.	Bernard Bernstein, Chester, S. C.	Jewett City Textile Novelty Co., Jewett City, Conn.
	July 22, 1938, Drugs.	Purex Products, Inc., Baltimore, Md.	Charlotte Distributing Co., Charlotte, N. C.
	July 23, 1938, Rayon.	Ranlo Mfg. Co., Gastonia, N. C.	Baldwin Mfg. Co., Elk Mills, Md.
	July 23, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Kraus Knitting Mills, Brooklyn, N. Y.
	July 25, 1938, Lino. Rugs.	Bird & Son, Inc., East Walpole, Mass.	Peerless Mattress Co., Lexington, N. C.
	July 25, 1938, Paint.	Pittsburgh Plate Glass Co., Newark, N. J.	Pittsburgh Plate Glass Co., Charlotte, N. C.
	July 26, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Elastic Distributers, Inc., New York, N. Y.
	July 27, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Philadelphia, Pa.
	July 28, 1938, Rayon.	Ranlo Mfg. Co., Gastonia, N. C.	Cohn-Hall-Marx Co., Paterson, N. J.
	July 29, 1938, Rayon.	Ranlo Mfg. Co., Gastonia, N. C.	Cohn-Hall-Marx Co., Paterson, N. J.
	July 30, 1938, Cot. Pc. Gds.	Bernard Bernstein Tex. Co., Hartsville, S. C.	Borgenight & Spiro, New York, N. Y.
319	Feb. 2, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Baldwin Mfg. Co., Elk Mills, Md.
	Feb. 5, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Feb. 12, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Feb. 12, 1938, Ale & Beer.	G. Krueger Brewing Co., Newark, N. J.	Dunlap & Mills, Wadesboro, N. C.

Exhibit No. 4 (Witness Beam)—Continued

	Date	Shipper	Consignee
	Feb. 15, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Feb. 17, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Feb. 19, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Feb. 23, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Feb. 25, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Mar. 8, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Mar. 9, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Davis Yarn Co., Brooklyn, N. Y.
	Mar. 11, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Davis Yarn Co., Brooklyn, N. Y.
	Mar. 12, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Mar. 14, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Davis Yarn Co., Brooklyn, N. Y.
	Mar. 15, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Davis Yarn Co., Brooklyn, N. Y.
	Mar. 16, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Davis Yarn Co., Brooklyn, N. Y.
	Mar. 17, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Davis Yarn Co., Brooklyn, N. Y.
	Mar. 18, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Davis Yarn Co., Brooklyn, N. Y.
	Mar. 19, 1938	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	Mar. 21, 1938 Ale & Beer	G. Krueger Brewing Co., Newark, N. J.	Dunlap & Mills, Wadesboro, N. C.
320	Apr. 30, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Baldwin Mfg. Co., Elk Mills, Md.
	May 3, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	May 6, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	May 12, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Baldwin Mfg. Co., Elk Mills, Md.
	May 25, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	May 26, 1938, Rayon Fibre.	Hughes Fawcett, New York, N. Y.	Ranlo Mfg. Co., Gastonia, N. C.
	May 26, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
	June 1, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
	June 7, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	June 11, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
	June 21, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	June 25, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
	June 29, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
	July 1, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
	July 7, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
	July 12, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
	July 16, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Quaker Pile Fabric, Phila., Pa.
	July 26, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Quaker Pile Fabric, Phila., Pa.
	July 24, 1938, Rayon Fibre.	Hughes Fawcett, New York, N. Y.	Ranlo Mfg. Co., Gastonia, N. C.
	July 30, 1938	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
321	Aug. 2, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller & Co., Phila., Pa.
	Aug. 3, 1938, Asbestos Yarn.	Southern Asbestos Co., Charlotte, N. C.	American Steel & Wire Co., Worcester, Mass.
	Aug. 31, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Pottstown Ktg. Mills, Pottstown, Pa.
	Aug. 4, 1938, Ale & Beer.	G. Krueger Brewing Co., Newark, N. J.	Dunlap & Mills, Wadesboro, N. C.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
Aug. 5, 1938, Asbestos Yarn.	Southern Asbestos Co., Charlotte, N. C.	American Brass Co., Waterbury, Conn.
Aug. 5, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller & Co., Phila., Pa.
Aug. 6, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Arcadia Knitting Mills, Allentown, Pa.
Aug. 9, 1938, Lino. Pdts.	Sandura Co., East Walpole, Mass.	B. C. Moore & Sons, Timmonsville, S. C.
Aug. 9, 1938, Cotton P. Gds.	Ninety Six Cotton Mills, Ninety Six, S. C.	Pond Lily Co., New Haven, Conn.
Aug. 10, 1938, Lino. Pdts.	Bird & Sons, East Walpole, Mass.	American Hdwe. Co., Greenville, S. C.
Aug. 10, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
Aug. 11, 1938, Paint.	Pittsburgh Plate Glass Co., Newark, N. J.	Pittsburg Plate Glass Co., Charlotte, N. C.
Aug. 11, 1938, Rayon Fibre.	Hughes Fawcett, New York, N. Y.	Ranlo Mfg. Co., Gastonia, S. C.
Aug. 11, 1938, Cot. Piece Gds.	Bernard Bernard, Lancaster, S. C.	Narragansett Finishing Co. Westerly, R. I.
Aug. 12, 1938, Cot. Piece Gds.	Anderson Cotton Mills, Anderson, S. C.	Pontiac Bleachery, Pontiac, R. I.
Aug. 13, 1938, Asbestos Yarn.	Southern Asbestos Co., Charlotte, N. C.	Russell Mfg. Co., Middletown, Conn.
Aug. 13, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Jacob Boltz Ktg. Mills, Pottsville, Pa.
Aug. 16, 1938, Cot. P. Goods.	Bernard Bernstein, Chester, S. C.	Acme Finishing Co., Pawtucket, R. I.
Aug. 18, 1938, C. P. Goods.	Hart Cotton Mills, Tarboro, N. C.	Jewett City Tex. Co., Jewett City, Conn.
Aug. 20, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller & Co., Phila., Pa.
322 Aug. 24, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller & Co., Phila., Pa.
Aug. 24, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Mohnton Ktg. Mills, Mohnton, Pa.
Aug. 26, 1938, Cotton Yarn.	Howell Mfg. Co., Gastonia, N. C.	Perfect Thd. Co., New York, N. Y.
Sept. 1, 1938, Paint.	Pittsburgh Plate Glass, Newark, N. J.	to Same Charlotte, N. C.
Sept. 1, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Baldwin Mfg. Co., Elk Mills, Md.
Sept. 2, 1938, C. P. Goods.	Ninety Six Cotton Mills, Ninety Six, S. C.	Pond Lily Co., New Haven, Conn.
Sept. 3, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Wilkes-Barre Lace Co., Wilkes-Barre, Pa.
Sept. 7, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
Sept. 8, 1938, Oil.	Shell Union Oil Corp., Sewaren, N. J.	Shell Union Oil Corp., Dillsboro, N. C.
Sept. 7, 1938 Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C.	Chester Lace Mills, Chester Pa.
Sept. 9, 1938, Cot. P. Goods.	Ninety Six Cotton Mills, Ninety Six, S. C.	Slatersville, Finishing Co., Slatersville, S. C.
Sept. 10, 1938 Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Franklin Rayon Co., Providence, R. I.
Sept. 10, 1938, Machinery.	Whitehall Hos. Mills, Phila., Pa.	Mount Holly Hos. Mills, Mt. Holly, N. C.
Sept. 12, 1938, Batteries.	Ele. Storage Batty. Co. Crescentville, Pa.	Quality Oil Co., Winston Salem, N. C.
Sept. 13, 1938, Cot. P. Goods.	Osage Mfg. Co., Bessemer City, N. C.	Pond Lily Co., New Haven, Conn.
Sept. 16, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Flexnit Co., Elizabeth, N. J.
Sept. 20, 1938, Silk Waste.	Maurice Lobsitz, Boston, Mass.	Shelby Cotton Mills, Shelby, N. C.
Sept. 21, 1938, Oil.	Shell Union Oil Corp., Sewaren, N. J.	Quality Oil Corp., Washington, N. C.
Sept. 21, 1938, Asbestos Spools.	Southern Asbestos Co., Charlotte, N. C.	General Cable Corp., Perth Amboy, N. J.
Sept. 22, 1938, Rayon P. Goods.	Langerre Sales Corp., Lexington, N. C.	Pond Lily Co., New Haven, Conn.
323 Sept. 24, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	North American Lace Co., Phila., Pa.
Sept. 30, 1938, Cotton Yarn.	Carlton Yarn Mills, Cherryville, N. C.	Crown Thread Co., New York, N. Y.

Exhibit No. 4 (Witness Beam)—Continued

Date	Shipper	Consignee
Oct. 1, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Kraus Knitting Mills, Brooklyn, N. Y.
Oct. 1, 1938, Asbestos Yarn.	Southern Asbestos Co., Charlotte, N. C.	Asbestos Textile Co., North Brookfield.
Oct. 3, 1938, Cot. P. Goods.	Bernard Bernstein, Lancaster, S. C	Pontiac Bleachery, Pontiac, R. I.
Oct. 3, 1938, Cotton Piece Goods.	Victor Monagham Co., Greer, S. C.	Cranston Print Works, Webster, Mass.
Oct. 3, 1938, Oil	Shell Union Oil Corp., Sewaren, N. J	Shell Union Oil Corp., Spruce Pines, Inc.
Oct. 4, 1938, Rayon	Brody Textile Co. New York, N. Y	Williams & Shelton, Charlotte, N. C.
Oct. 5, 1938, Cotton Yarn.	Cross Cotton Mills, Marion, N. C.	Hamburg Knitting Mills, Hamburg, Pa.
Oct. 5, 1938, Spun Rayon.	Langerre Sales Corp., Lexington, N. C.	Pond Lily Co., New Haven, Conn.
Oct. 7, 1938, Cotton Yarn.	Howell Mfg. Co., Cherryville, N. C	Halliwell Co., Providence, R. I.
Oct. 8, 1938, Machinery.	Whitehall Knitting Mills, Phila., Pa.	Mount Holly Hos. Mills, Mt. Holly, N. C.
Oct. 14, 1938, Cotton Piece Goods.	Springs Cotton Mills, Lancaster, S. C.	Acme Finishing Co., Pawtucket, R. I.
Oct. 15, 1938, Rayon Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	L. P. Muller, Phila., Pa.
Oct. 17, 1938, Rayon Yarn.	Lehigh Valley Throwing Co., Bethlehem, Pa.	Cleveland Cloth Mills, Cleveland, N. C.
Oct. 19, 1938, Cotton Yarn.	Ranlo Mfg. Co., Gastonia, N. C.	Blossom Products, Inc., Allentown, Pa.

324 [Clerks' certificates to foregoing transcript omitted in printing.]

326 In Supreme Court of the United States

Statement of the points to be relied upon by the appellants and designation of the parts of the record to be printed

Filed July 3, 1941

I

The points to be relied upon by the appellants are the assignments of error included in the transcript of record from the District Court.

II

The parts of the record necessary for the consideration of said points and which should be printed are the portions of the

record set out and stated in stipulation between appellants and appellee hereto attached.

327 Dated this 30th day of June 1941.

UNITED STATES OF AMERICA,
CHARLES FAHY,
Acting Solicitor General.
FRANK COLEMAN,
Spec. Asst. to Atty. Gen.
INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.
NELSON THOMAS,
Attorney.

Copy of the above statement and designation received this 30th day of June 1941.

WILMER A. HILL,
Attorney,
Carolina Freight Carriers Corp.

328 In Supreme Court of the United States

Stipulation as to printing of record on appeal

It is hereby stipulated and agreed by and between the appellants and the appellee that the following portions of the transcript of the record from the District Court should be printed:

1. The complaint together with Exhibit A thereto.
2. Order of Judge Webb, January 8, 1941, convening three-judge court.
3. Order of three-judge court, January 8, 1941, reciting, among other things, that hearing upon application for interlocutory injunction should be as upon final hearing.
4. Answer of Interstate Commerce Commission.
5. Answer of United States of America.
6. Findings of fact and conclusions of law requested by defendants (appellants), but not given by the Court.

329 7. Findings of fact, conclusions of law, opinion and decree made and entered by the Court under date of April 5, 1941.

8. Petition for appeal, May 29, 1941.
9. Assignment of errors.
10. Jurisdictional statement.
11. Statement calling attention to paragraph 3 of Rule 12 of revised rules of the Supreme Court of the United States.
12. Order allowing appeal.

13. Acknowledgement by appellee of receipt of copy of order allowing appeal.

14. Citation on appeal.

15. Minute and docket entries as set out on page 71 of the transcript.

16. Appellants' precipe for transcript of record.

17. Transcript of testimony received at hearing before Interstate Commerce Commission, October 28, 1938, in Docket No. MC 2253, as set out in transcript of record from the District Court, pages 76 to 287, inclusive.

18. Exhibits 1, 2, 3, and 4 to the testimony above-described as set out in transcript of record from the District Court, pages 289 to 292, inclusive.

19. Statement of points to be relied on and designation of parts of record to be printed, together with this stipulation relative to printing.

It is further stipulated and agreed that any portion of the transcript of the record transmitted by the Clerk of the District Court, even though not printed in the official printed record hereinabove provided for, may be referred to by any party to this appeal in brief or argument.

330 Dated this 30th day of June, 1941.

UNITED STATES OF AMERICA,
CHARLES FAHY,
Acting Solicitor General,
FRANK COLEMAN,
Spec. Asst. to Atty. General.
INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Chief Counsel.
NELSON THOMAS,
Attorney.
CAROLINA FREIGHT CARRIERS CORPORATION,
By WILMER A. HILL,
Attorney.

U. S. GOVERNMENT PRINTING OFFICE: 1941

FILE COPY

JUN 20 1941

No. 197

In the Supreme Court of the United States

OCTOBER TERM, 1941

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAROLINA FREIGHT CARRIERS CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Western District of North Carolina, Charlotte Division

Civil Action File No. 139

CAROLINA FREIGHT CARRIERS CORPORATION,
PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

JURISDICTIONAL STATEMENT BY THE DEFENDANT-APPELLANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed:

A. Statutory provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, Section 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3,

1911, c. 231, Section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Section 35, 31 Stat. 85; April 30, 1900, c. 339, Section 86, 31 Stat. 158; March 3, 1909, c. 269, Section 1, 35 Stat. 838; March 3, 1911, c. 231, Sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Section 2, 38 Stat. 804; February 13, 1925, c. 229, Section 1, 43 Stat. 938).

B. Date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented

The decree sought to be reviewed was entered on April 5, 1941. The petition for appeal was presented on May 1941, together with an assignment of errors.

C. Nature of cause and of rulings below

This is an appeal from a decree of the District Court of the United States for the Western District of North Carolina, Charlotte Division, entered April 5, 1941, granting the prayer of a complaint which was filed in said Court in the above-styled proceeding by the above-named plaintiff under and pursuant to the provisions of Section

41 (28) and Sections 43 to 48, inclusive, of Title 28, U. S. C.

Said complaint prayed that said District Court enjoin, set aside and annul an order of the Interstate Commerce Commission entered July 10, 1940, in proceedings entitled *Carolina Freight Carriers Corporation Common Carrier Application,* No. MC 2253 (reported 24 M. C. C. 305), insofar as said order and its accompanying report found that the said applicant had failed to establish its right to a certificate to operate as a common carrier under the "grandfather" clause of Section 206 (a) of the Motor Carrier Act, 1935, and in part denied said application. The complaint filed in the above-named District Court alleged, among other things, that the Commission's said order was erroneous in law, and that in the light of the facts shown in evidence before the Commission, the plaintiff was and is entitled to a certificate as prayed in its application, and that by reason of the said order of the Commission denying in part the prayer of said application the plaintiff would suffer great and irreparable injury to its business.

The case was heard upon final hearing before a court of three judges organized pursuant to U. S. C. Title 28, Section 47 (Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220). A transcript of all the evidence received before the Interstate Commerce Commission, duly certified by the Secretary of the Commission, was received in evidence before said Court. Thereafter, on

April 5, 1941, the Court rendered its opinion holding that the prayer of the complaint should be granted, and made its findings of fact and conclusions of law, and on the same day the Court entered the final decree sought to be reviewed.

The questions presented by this appeal are substantial. They involve the duties and powers of the Interstate Commerce Commission with respect to the issuance of certificates for common carriers under the so-called "grandfather" clause of Section 206 of the Motor Carrier Act, 1935. They also involve the duties and functions of the District Court with regard to the weighing of evidence heard by the Interstate Commerce Commission in suits involving the validity of the action of the Commission in denying or granting applications for common carrier certificates under said "grandfather" clause.

D. Cases sustaining the Supreme Court's jurisdiction on appeal

Loving v. *United States*, 32 F. Supp. 464; 310 U. S. 609.

United States v. *Maher*, 307 U. S. 148.

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499.

United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454.

Florida v. *United States*, 282 U. S. 194.

Beaumont, Sour Lake & Western Ry. Co., v. *United States*, 282 U. S. 74.

Ann Arbor Railroad Co. v. *United States,* 281 U. S. 658.

Louisville & Nashville R. R. Co. v. *United States,* 238 U. S. 1.

Interstate Commerce Commission v. *Union Pacific Ry. Co.,* 222 U. S. 541.

E. Decree and opinion of the District Court

Appended to this statement is a copy of the opinion of the District Court with its findings of fact and conclusions of law and a copy of the decree of said Court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated May 29, 1941.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

(S.) THERON LAMAR CANDLE,
United States Attorney.

THURMAN ARNOLD,
Assistant Attorney General.

FRANK COLEMAN,
Special Assistant to the Attorney General for the United States of America.

DANIEL W. KNOWLTON,
Chief Counsel.

NELSON THOMAS,
Attorney for the Interstate Commerce Commission.

Service of the foregoing Jurisdictional Statement by the defendant-appellants under Rule 12 of the Revised Rules of the Supreme Court is hereby acknowledged and accepted this 10th day of June 1941.

(S.) WILMER A. HILL,
Attorney for Carolina Freight Carriers Corp.

EXHIBIT A

In the District Court of the United States for the Western District of North Carolina

CAROLINA FREIGHT CARRIERS CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Findings of Fact and Conclusions of Law

FINDINGS OF FACT

The Court makes the following findings of fact:

1. That plaintiff is a corporation organized and existing under the laws of the State of North Carolina and as such is engaged as a common carrier by motor vehicle in interstate commerce.

2. That a plaintiff is the successor of the Mauney Transfer Company, a corporation created and existing under the laws of North Carolina, which was engaged as a common carrier by motor vehicle in interstate commerce on and for some time prior to June 1, 1935.

3. That, on January 24, 1936, the Mauney Transfer Company filed in due form its application with

the Interstate Commerce Commission, under the "grandfather" clause of section 206 (a) of the Motor Carrier Act of 1935, requesting a certificate authorizing operation as a common carrier by motor vehicle in interstate or foreign commerce of general commodities (Except commodities of unusual value, those in bulk, those requiring special equipment such as tank or refrigerator trucks, those injurious to other lading, live stock, automobiles and high explosives) between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghamton and south of Albany; and between Cherryville and Boston, Mass., through Henderson, N. C., Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y., over irregular routes.

4. That plaintiff, with its predecessor, the Mauney Transfer Company, has been operating as a common carrier of freight in interstate commerce by irregular routes since 1931 in a territory which may be roughly described as lying along the Atlantic Seaboard between New York and New England on the north and the Carolinas on the south; that plaintiff and its predecessor have been holding themselves out as a common carrier in this terri-

tory and accepting for transportation all such commodities as they could obtain to transport, other than those for which special equipment was required; that, as they have been operating in the heart of the textile center of the Carolinas, a large part of their north bound traffic has consisted of textile products of various kinds, although they have transported northward asbestos products, rubber tires and various other commodities; that their south bound traffic has consisted of whatever they could pick up by their own efforts or through the solicitation of freight brokers with whom they did business; that among the articles transported by the Mauney Transfer Company prior to June 1, 1935, were cotton yarn, yarn tubing, warp beams, cones, skeins, cotton bed-spreads, petroleum products, canned goods, medicine, batteries, linoleum rugs, paper, brazil nuts, rayon, machinery, roofing, wire, nails, screen cloth, enamelware, electrical supplies, plumbing supplies, tires, asbestos products, cocoa, general hardware, chemicals, beer, paper containers, cotton fabric, spools, empty barrels, and boxes, and cotton piece goods; and that the business done by plaintiff and its predecessor in the territory in which they have operated has been of a substantial character, both before and since June 1, 1935.

5. That plaintiff and its predecessor have never limited themselves in their holding out as common

carriers to the specific commodities which they have received for transportation, but have solicited business as carriers of general package freight, other than the specialities requiring special equipment; and that the business carried on by them since June 1, 1935, has been of the same character as that carried on by them prior to that date.

6. That the Interstate Commerce Commission granted to plaintiff a certificate limiting the right to operate as a common carrier to the carrying of specific commodities shown to have been handled "with a degree of regularity both prior to and since June 1, 1935" and these only to the specific points served both prior to and since June 1, 1935, in the carrying of these commodities, its decision being reported in 24 M. C. C. 305 and by reference made a part of this paragraph.

7. That the effect of the limitation contained in the certificate granted plaintiff will be to forbid operation by plaintiff, as plaintiff cannot profitably operate as a common carrier if limited to the points and commodities embraced in the certificate as granted; and that in view of the holding out by plaintiff and its predecessor in interest and the substantial character of the business done by them as haulers of general package freight, the limitations contained in the order of the Commisison constitute unreasonable limitations upon the right of plaintiff to do business under the "grandfather" clause of the statute.

CONCLUSIONS OF LAW

And the Court sets forth the following as its conclusions of law:

1. That the limitation of the certificate granted plaintiff to commodities carried and points served prior to and since June 1, 1935, is not warranted by the statute and same constitutes error of law invalidating the order of the Commission.

2. That the finding of the Commission that the transportation service of plaintiff as a common carrier of commodities in the territory served prior to and since June 1, 1935, was limited to commodities carried and points served prior to and since said date, ignores the common law duty of a common carrier and the essential character of his holding out and is so arbitrary and unreasonable as to transcend the Commission's power.

3. That in limiting the certificate to specific commodities carried and points served on the theory that irregular common carriers should be so limited for the protection of common carriers operating on regular routes, the Commission proceeded upon an erroneous theory of law and transcended the powers vested in it by Congress.

4. That the order of the Commission should be set aside and the cause should be remanded to the Commission to the end that it may pass upon plain-

tiff's application for a certificate in the light of the principles set forth in the opinion herein.

Sgd. JOHN J. PARKER,
United States Circuit Judge,
Fourth Circuit.

Sgd. ARMISTEAD M. DOBIE,
United States Circuit Judge,
Fourth Circuit.

Sgd. E. Y. WEBB,
United States District Judge,
Western District of North Carolina.

In the District Court of the United States for the Western District of North Carolina

CAROLINA FREIGHT CARRIERS CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

On application to set aside an order of the Interstate Commeree Commission

(Argued January 8, 1941—Decided)

Before PARKER and DOBIE, *Circuit Judges,* and WEBB, *District Judge.*

Wilmer A. Hill and R. G. Cherry for plaintiff; Frank Coleman, Special Assistant to the Attorney General, Theron L. Caudle, U. S. Attorney, Nelson Thomas, Attorney for Interstate Commerce Commission (Thurman Arnold, Assistant Attorney General, and Daniel W. Knowlton, Chief Counsel,

Interstate Commerce Commission, of counsel) for defendants; and Harry F. Gillis, Nuel D. Belnap and Robert N. Burchmore, for the Irregular Common Carriers Association of America, Amicus Curiae.

I concur.

(Sgd.) JOHN J. PARKER,
U. S. Circuit Judge.

I concur.

(Sgd.) A. M. DOBIE,
U. S. Circuit Judge.

I concur.

(Sgd.) E. Y. WEBB,
U. S. District Judge.

PARKER, *Circuit Judge:*

This is a suit under 28 USCA 41 (28) to enjoin and set aside an order of the Interstate Commerce Commission made upon an application for a certificate of public convenience and necessity under the "grandfather" clause of section 206 (a) of the Motor Carrier Act of 1935, 49 USCA 306 (a). See 24 M. C. C. 305. Interlocutory injunction has been applied for and a special statutory court of three judges has been convened pursuant to section 47 of Title 28 of the United States Code. At the hearing upon the application for interlocutory injunction, the evidence heard before the Commission has been introduced, and the case has been submitted for final decree.

Plaintiff with its predecessor Mauney Transfer Company, Inc., has been operating as a common carrier of freight by irregular routes since 1931. The evidence, which is uncontradicted, shows beyond question that it was holding itself out as a common carrier and accepting for transportation all such commodities as it could obtain, other than those for which special equipment was required. As it was operating in the heart of the textile center of the Carolinas, a large part of its north bound traffic consisted of textile products of various kinds, although the evidence shows that it also obtained for transportation and transported northward asbestos products, rubber tires and various other commodities. Its south bound traffic consisted of whatever it could pick up by its own efforts or through the solicitation of freight brokers with whom it did business. The Commission found "that prior to June 1, 1935, south bound shipments consisted of a variety of commodities destined to a few points in Virginia and South Carolina and to points scattered throughout North Carolina." An examination of the record shows that among the articles transported prior to June 1, 1935, were cotton yarn, yarn tubing, warp beams, cones, skeins, cotton bed-spreads, petroleum products, canned goods, medicine, batteries, linoleum rugs, paper, brazil nuts, rayon, machinery, roofing, wire, nails, screen cloth, enamelware, electrical supplies, plumbing supplies, tires, asbestos products, cocoa, general hardware, chemicals, beer,

paper containers, cotton fabric, spools, empty barrels and boxes, and cotton piece goods. The territory over which the operations of plaintiff were conducted was, roughly speaking, the territory lying along the Atlantic Seaboard between the Carolinas and New York and New England. On June 1, 1935, plaintiff or its predecessor in interest, was operating six or eight trucks within this territory.

By application filed January 24, 1936, the Mauney Transfer Company, predecessor of plaintiff, sought under the "grandfather" clause of section 206 (a) of the Motor Carrier Act a certificate of public convenience and necessity, authorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities (excepting commodities of unusual value, those in bulk, those requiring special equipment, etc.) between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, and Massachusetts, and those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghamton and south of Albany, over irregular routes, and between Cherryville and Boston, Mass., over a regular route through Henderson, N. C., Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y.

The Commission granted a certificate to plaintiff but limited it both as to points of operation and commodities, allowing operation only with respect

to commodities shown to have been transported by plaintiff prior to June 1, 1935, and only between the points where the transportation of such commodities between the same points was shown subsequent to June 1, 1935. The basis of this decision of the Commission was set forth in its report as follows:

> We have frequently stated that authority to transport general commodities throughout a wide territory, over irregular and unspecified routes, pursuant to the "grandfather" clauses of the act should be granted to a carrier only when such carrier's right thereto has been proved by substantial evidence. To do otherwise would create the very ills which regulation is designed to alleviate, namely, congestion of highways, destructive rate practices, and unbridled competition. Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service. On the basis of all the evidence, it is clear that no substantial showing of service has been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the States included in the application.

> Applicant also contends that a carrier who has filed an application under the "grandfather" clause of section 206 (a) of the act may not be restricted to the transportation of the commodities carried on June 1, 1935. Section 203 (a) (14) of the act contemplates that a common carrier may transport only a "class or classes of property," and we have found in numerous cases that the authority issued under the "grandfather" clauses of sections 206 (a) and 209 (a) of the act should reflect any limitation in the undertaking of common or contract carriers as indicated by the service actually rendered on and since the statutory dates.

The finding and decision of the Commission upon which the limitation of the order, complained of by plaintiff, is based is as follows:

> We find that applicant's predecessor in interest was on June 1, 1935, and continuously since it and its predecessor have been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11, and points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J., (2) of asbestos tex-

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tile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middleton, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass., (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction, (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina, (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C., (6) of canned goods from Baltimore, Md., to Shelby, N. C., (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes; that applicant is entitled to a certificate authorizing continuation of such operation; and that the application in all other respects should be denied.

Plaintiff says that the effect of thus limiting the order will be to put it out of business; and it is manifest that this must be true since it is hardly conceivable that a trucking company could do business if allowed to carry loads in only one direction, and the limitations imposed by the order will ren-

der it practically impossible for the trucks of plaintiff to obtain freight when returning South. It is the contention of plaintiff that the limitations are unreasonable and are not authorized by law; and certain it is that they amount to a reductio ad absurdum of the position taken by the Commission in this and a number of other cases to the effect that classification justifies limitation of "grandfather" certificates to specific commodities shown to have been transported between specific points. As pointed out in the brief of the Amicus Curiae:

> With northbound authorities so limited, applicant would be permitted to transport cotton yarn to many destinations and territories to which it would be denied the right to transport on the same trip asbestos textile products, and correspondingly would be permitted to handle asbestos textile products to Boston and Hudson, Mass., although on the same trip it would not be permitted to haul cotton yarn. Incidentally, in summarizing the proof, the Commission found as a fact as to cotton yarn that ten Massachusetts points were served prior to June 1, 1935, and as to asbestos textile products that services were required by the shipper to all points in a number of northern states.
>
> * * * * *
>
> Considering only the southbound, plaintiff can go with petroleum products from Marcus Hook, Pa., to Columbia, S. C., but not with linoleum, and in contrast he can go

with linoleum from Marcus Hook, Pa., to Spartanburg, S. C., but not with petroleum products. He can go with either of these commodities from two specified origins to any destination in North Carolina, but when it comes to canned goods, which he is authorized to carry from Baltimore, he must confine his deliveries to Shelby in that state, and when he goes with beer and ale from Newark, N. J., he must confine his deliveries to Gastonia and Wadesboro. Even then, while he is authorized to originate beer and ale at New Jersey for delivery at the points just named, he is not permitted to handle that commodity if originated at Baltimore, although he is allowed to pick up canned goods at the latter point.

The plaintiff is authorized to deliver cotton yarn at specified points in Maryland, New York, and Rhode Island, at all points in eastern Pennsylvania, and eight counties of northern New Jersey, but he is prohibited from obtaining any of the commodities which he is authorized to transport southbound unless he goes to Harrison or Perth Amboy, N. J., for supplies and materials; to Sewaren, N. J., or Marcus Hook, Pa., for petroleum; to Paulsboro, N. J., Marcus Hook, Pa., or East Walpole, Mass., for linoleum; to Baltimore for canned goods, to Newark, N. J., for beer and ale; or to York, Pa., for roofing and screen wire.

We think it perfectly clear that no such result was contemplated by Congress in the passage of

the Transportation Act. On the contrary, the clear meaning of the language used in the act is that common carriers in business at the time of its passage and since, should be allowed to continue in business as common carriers in the same territory without proof of public convenience and necessity. Sec. 206 (a) of the Act (49 USCA 306 (a) provides:

> Except as otherwise provided in this section and in section 310a, no common carrier by motor vehicle subject to the provisions of this chapter shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: Provided, however, That, subject to section 310, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring

> further proof that public convenience and necessity will be served by such operation, * * *.

There is nothing in this language or in the reason and spirit of the act which justifies the limiting of certificates granted common carriers under the grandfather clause to the precise commodities which they have theretofore hauled or in the case of carriers by irregular routes to the precise points that they have served in the territory over which they have operated. It is well settled that "a common carrier is one who undertakes, for hire or reward, to transport the goods of such as choose to employ him from place to place." Dwight v. Brewster, 1 Pick. 50, 63; Dobie on Bailments and Carriers, sec. 107; Hutchinson on Carriers, 3d ed. sec. 47. We agree, of course, that a mere holding out by a common carrier is not enough to bring him within the protection of the "grandfather" clause. The statute provides that he must have been in *bona fide operation* as a common carrier within the territory; and this *bona fide* operation means, we think, that he must have done such a substantial volume of business within the territory that he could reasonably be said to be operating therein as a common carrier. But there is nothing in the act which justifies the Commission in saying that because a common carrier who was operating as a general carrier of package freight did not haul rubber tires prior to 1935 he is not to be permitted

to haul them in 1940, or that because he did not haul canned goods to Charlotte prior to 1935, although hauling them to Shelby in the same territory, he should not be permitted to haul them to Charlotte thereafter.

The Commission seeks to justify the limitation here imposed under the definition of common carrier contained in section 203 (14), 49 USCA 303 (14), which provides:

> The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of chapter 1 of this title.

It is perfectly clear, however, that no authority for such limitation can be found in this definition. On the contrary, the effect of the language used is merely to make clear that "specialty haulers", i. e., those who transport any special class or classes of property, are to be deemed common carriers, as well as those who transport property generally. And we think it significant that in making classifications of carriers for the proper performance of

its duties, the Commission has not attempted to classify with respect to points served or specific commodities hauled, but has defined its seventeen classes of carriers on the basis of the general business engaged in. The classification is a follows: (1) carriers of general freight, (2) carriers of household goods, (3) carriers of heavy machinery, (4) carriers of liquid petroleum products, (5) carriers of refrigerated liquid products, (6) carriers of refrigerated solid products, (17) carriers engaged in dump trucking, (8) carriers of agricultural commodities, (9) carriers of motor vehicles, (10) carriers engaged in armored-truck service, (11) carriers of building materials, (12) carriers of films and associated commodities, (13) carriers of forest products, (14) carriers of mine ores, not including coal, (15) carriers engaged in retail-store delivery service, (16) carriers of explosives or dangerous articles, (17) carriers of specific commodities, not subgrouped. Ex Parte No. MC 10, Classification of Motor Carriers of Property, 2 M. C. C. 703, 706. Under this classification, plaintiff should manifestly be classified as a carrier of general freight, since it was willing to haul any freight that it was offered, outside of the specialties requiring specialized equipment, and did substantial business of this character. Being a common carrier of general freight during the "grandfather" period, it became entitled to a certificate on the same basis; and we see nothing in any language of the act which justifies the Commission in

limiting the certificate to the points served and the specific commodities transported. "Grandfather" clauses are quite customary when the state first undertakes the regulation of an industry or profession; and so far as we are advised the position taken by the Commission with respect to these cases is quite without precedent. It is just as though a physician entitled to continue his practice under the grandfather clause of a statute regulating the practice of medicine should be told that he could practice only in the homes which he had formerly visited in his practice and would be allowed to treat only the diseases which he had formerly treated. We feel perfectly sure that if any such interpretation of the act had been suggested at the time of its consideration by Congress, it never would have been passed.

It is argued that the position of the Commission here has been approved by the Supreme Court in Loving v. United States 310 U. S. 609, affirming 32 F. Supp. 464, and see 12 M. C. C. 571. We do not think so. The Loving case presented the situation of an applicant whose holding out over a large territory was not supported by any substantial transportation; and the cases cited by the Supreme Court in its per curiam opinion sustains no such radical limitation of the meaning of the statute as is here proposed by the Commission. McDonald v. Thompson 305 U. S. 263 held merely that *bona fide* operation was a prerequisite to obtaining a

certificate under the "grandfather" clause of 206(a) of the statute and that operation in violation of a state statute was not such *bona fide* operation. United States v. Maher 307 U. S. 148, held merely that certificate for route between fixed termini was not supported by proof of operation within the grandfather period of "anywhere for hire" service which was abandoned when the new route was instituted, and that the Commission finding on controverted matters of fact was binding. The other cases cited are pertinent merely with respect to the point last mentioned. We do not think that the Loving decision can reasonably be construed as an approval by the Supreme Court of the position taken by the Commission here, viz., that notwithstanding that a common carrier may have done substantial business pursuant to his holding out as a carrier of general package freight during the grandfather period, he is not to be granted a certificate for the territory served commensurate with his holding out and the business done pursuant thereto, but is to be limited just as though he had limited himself to the hauling of the special commodities received pursuant to his holding out and to the points to which these commodities happened to be hauled in the territory. The order of the Commission here under review not only so limits the certificate but further limits it to the points and commodities to which plaintiff's transportation extended both before and after the crucial date of June 1, 1935.

We have considered the case of Eastern Carrier Corp. v. United States, 31 F. Supp. 232, upon which counsel for the Commission rely; but that was a case involving transportation found to have been "more or less sporadic". The learned Senior Circuit Judge of the Third Circuit laid down in that case, however, the rule which we think applicable here, as follows: "If the plaintiff's predecessor was engaged in the bona fide transportation of merchandise generally at the grandfather date and this transportation was carried on by the plaintiff thereafter, a certificate of public convenience and necessity to continue that transportation should have been granted by the Commission."

It is argued that the interpretation placed by the Commission on the act has received the approval of Congress because in the Transportation Act of 1940 Congress did not legislate with regard thereto. It is to be noted, however, that section 203 (a) (14) of the Act of 1935, being the very section upon which the Commission relies for its interpretation, was amended so that a common carrier is now defined in terms of holding out. Quite apart from this, however, the interpretation placed upon the act has by no means been so uniform as to justify the conclusion that Congress could be deemed to have legislated with regard thereto. George Cassens Sons Common Carrier Application, 1 M. C. C. 771; Slagle Contract Carrier Application, 2 M. C. C. 127; Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, 744–745. And the

rule is well settled that administrative practice or interpretation has no weight where, as here, the language of the statute is unambiguous and such practice or interpretation is unreasonable and clearly inconsistent with it. Helvering v. Safe Deposit & Trust Co., 4 Cir. 95 F. 2d 806, 811; Manhattan General Equipment Co. v. Commissioner 297 U. S. 129, 134.

It is, of course, reasonable to limit the certificate to the type of service rendered by the carrier during the grandfather period, and to limit the territory to that within which substantial service of that type has been rendered; but it is unreasonable to limit the certificate of one who has functioned as a general carrier to the specific commodities carried and the specific points served. The law cannot reasonably be construed as authorizing such limitation. Nor can it be justified on the ground that it is based upon a finding of fact by the Commission. In the first place, a finding that the carrier here limited itself to the precise commodities transported and the precise points served is not supported by any evidence; and a finding that a general carrier of package freight should be held to be limited in his service to the precise commodities that he is able to obtain, when it is holding himself out as a general carrier, is so arbitrary and unreasonable as to transcend the Commission's power. *Anchor Coal Co.* v. *United States,* 25 F. 2d 462, 471; *Southern Pacific Co.* v. *I. C. C.,* 219 U. S. 433, 31 S. Ct. 288, 55 L. Ed. 283; *I. C. C.* v.

Union Pacific Co., 222 U. S. 541, 32 S. Ct. 108, 56 L. Ed. 308; *U. S.* v. *N. Y. C. R. R.*, 263 U. S. 603, 44 S. Ct. 212, 68 L. Ed 470; *U S.* v. *New River Co.*, 265 U. S. 533, 540, 44 S. Ct. 610, 68 L. Ed. 1165. In the second place, nothing in the act warrants the limitation of the certificate of a general carrier upon such a finding.

There is another ground upon which the order of the Commission must be held invalid. The limitation which it imposes with respect to irregular route carriers is not imposed with respect to carriers on regular routes and is admittedly imposed by it for the protection of regular route carriers. The Commission so states in the portion of its opinion quoted above, wherein the Commission said: "Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service." But Congress has made no such distinction between common carriers by regular and those by irregular routes; and, for the Commission to make such distinction is to add to the act of Congress in favor of one class of carriers and against another. This the Commission cannot do. *Ann Arbor R. Co.* v. *United States*, 281 U. S. 658; *Anchor Coal Co.* v. *United States*, 25 F. 2d 462.

For the reasons stated, the order of the Commission will be set aside (*Rochester Tel. Corp.* v. *United States* 307 U. S. 125), and the cause will be remanded to the end that the Commission may pass upon the application of plaintiff in the light of the principles herein set forth. *Federal Communications Com'n* v. *Pottsville Broadcasting Co.* 309 U. S. 134. This does not mean that plaintiff is necessarily entitled to the certificate applied for, but that the Commission should pass upon the application in the light of the principles here laid down, and without the limitations which we have condemned, and grant to plaintiff a certificate covering the territory in which it finds that plaintiff carried on substantial operations as a common carrier during the grandfather period and has since carried on same.

Order set aside.

In the District Court of the United States for the Western District of North Carolina

CAROLINA FREIGHT CARRIERS CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

DECREE

In this suit brought under 28 USCA 41 (28) to enjoin and set aside an order of the Interstate Commerce Commission, an interlocutory injunc-

tion having been asked and a court of three judges having been convened pursuant to 28 USCA 47, and the cause having been submitted upon the hearing for final decree, and the court having filed its findings of fact and conclusions of law which are by reference made a part hereof: Now, therefore, for the reasons set forth in the written opinion filed herewith,

It is ordered, adjudged and decreed that the order of the Interstate Commerce Commission filed July 10, 1940, in the proceeding wherein the plaintiff herein was an applicant for a certificate of public convenience and necessity and referred to in the decision of the Commission reported in 24 M. C. C. 305 be and the same is hereby set aside and annulled, and the cause is remanded to the Commission for further proceedings not inconsistent with the opinion of the Court filed herewith.

Sgd. JOHN J. PARKER,
United States Circuit Judge, Fourth Circuit.

Sgd. ARMISTEAD M. DOBIE,
United States Circuit Judge, Fourth Circuit.

Sgd. E. Y. WEBB,
United States District Judge,
Western District of North Carolina.

APRIL 5th, 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

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No. 197

In the Supreme Court of the United States

OCTOBER TERM, 1941

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAROLINA FREIGHT CARRIERS CORPORATION

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Specification of errors to be urged	10
Summary of Argument	10
Argument:	
The Commission is empowered under the statute to limit appellee's authority to the commodities in fact carried in substantial quantity and places in fact substantially served on and after the "grandfather" date	11
1. The *Loving* case	13
2. Analysis of the statute	15
3. This case	20
4. Representation to the public	23
5. Discrimination	57
6. Economic consequences of the Commission's order on appellee	28
Conclusion	29
Appendix	31

CITATIONS

Cases:	
Alton R. R. v. *United States*, Nos. 110 and 267, this Term	24, 25
Classification of Motor Carriers of Property, 2 M. C. C. 703	17, 21
Eastern Carrier Corp. v. *United States*, 31 F. Supp. 232	15, 18, 27
Fisher Common Carrier Application, 14 M. C. C. 655	21
Fleming Common Carrier Application, 8 M. C. C. 469	24, 26
George Caesens & Sons Common Carrier Application, 1 M. C. C. 771	19
Gray v. *Powell*, No. 18, this Term	27
Gulf M. & O. R. Co. v. *Luter Motor Express*, 1 So. (2d) 231	13
Howard Hall Co., Inc., Common Carrier Application, 24 M. C. C. 273	19
Howard Hall Co., Inc., Eastern Territory Extension, No. MC-42318 (Sub-No. 1), Record, *Howard Hall Co., Inc.*, v. *United States*, No. 210, this Term	29
Howard Hall Co., Inc., v. *United States*, 38 F. Supp. 556	19
Jersey Coast Transfer Co., Inc., Common Carrier Application, 9 M. C. C. 780	17, 22
Loving Common Carrier Application, 12 M. C. C. 571	13, 17, 26
Loving v. *United States*, 32 F. Supp. 464, affirmed per curiam, 310 U. S. 609	10, 14, 27

Cases—Continued. Page

McDonald v. *Thompson*, 305 U. S. 263 ..... 16, 26
Maher Common Carrier Application, 3 M. C. C. 479 28
Maher v. *United States*, 23 F. Supp. 810, reversed *sub nom. United States* v. *Maher*, 307 U. S. 148 28
Matter of Santini Bros., Inc. v. *Maltbie*, 260 App. Div. 545 .. 13
Reliance Trucking Co., Inc., Common Carrier Application, 4 M. C. C. 594 21
Rochester Telephone Corp. v. *United States*, 307 U. S. 125 .. 27
Shields v. *Utah Idaho Central R. R.*, 305 U. S. 177 27
Slagle Contract Carrier Application, 2 M. C. C. 127 17
South Chicago Coal & Dock Co. v. *Bassett*, 309 U. S. 251 .. 27
United States v. *Maher*, 307 U. S. 148 ..... 16, 18, 20, 29
Whinney v. *Public Serv. Comm.*, 116 Pa. Super. 472 13

Statute:

Act of August 9, 1935, c. 722, 49 Stat. 543, 544, 551, 552:
Sec. 202 (a) (U. S. C., Supp. v, title 49, sec. 302 (a)) .. 31
Sec. 203 (a) (14) (U. S. C., Supp v, title 49, sec. 303 (a) (14)) 16, 25, 31
Sec. 206 (a) (U. S. C., Supp. v, title 49, sec. 306 (a)) .. 10, 11, 32
Sec. 207 (a) (U. S. C., Supp. v, title 49, sec. 307 (a)) .. 29
Sec. 208 (a) (U. S. C., Supp. v, title 49, sec. 308 (a)) .. 16, 33
Act of September 18, 1940, c. 722, 54 Stat. 920:
Sec. 18 (a) 25

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 197

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAROLINA FREIGHT CARRIERS CORPORATION

BRIEF FOR THE UNITED STATES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA

OPINION BELOW

The opinion of the District Court (R. 25–34) is reported in 38 F. Supp. 549. The report of the Interstate Commerce Commission (R. 6–11) is reported in 24 M. C. C. 305.

JURISDICTION

The decree of the District Court was entered on April 5, 1941 (R. 34). The petition for appeal was presented on May 29, 1941, and was allowed on the same day (R. 35–38). The jurisdiction of this Court is conferred by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 210, 219

(U. S. C., title 28, secs. 45, 47a); section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, par. (4) (U. S. C., title 28, sec. 345); and by section 205 (h) of the Motor Carrier Act, 1935, c. 498, 49 Stat. 543 (U. S. C., Supp. V, title 49, sec. 305 (h)).

QUESTION PRESENTED

The Interstate Commerce Commission granted a certificate of public convenience and necessity under the "grandfather" clause of section 206 (a) of the Motor Carrier Act, 1935, authorizing appellee to carry the classes of commodities in fact hauled by it in substantial quantity on and after June 1, 1935, over irregular routes between the places in fact substantially served by it on and after that date. The question is whether the Commission erred in so limiting the authority given in the certificate without regard to appellee's holding itself out on and after the crucial date as a common carrier of general freight to and from any points in a large Atlantic seaboard area.

STATUTE INVOLVED

The relevant provisions of the Motor Carrier Act, 1935, applicable at the date of the Commission's order, July 10, 1940, are set forth in the Appendix, *infra*, pp. 31–33.

STATEMENT

The facts, appearing from the findings of the Interstate Commerce Commission and from the

evidence presented in proceedings before the Commission, may be summarized as follows:[1]

Mauney Transfer Company, Inc., appellee's predecessor in the trucking business, commenced operation in 1931, with three trucks (R. 7; 77). This number had been increased to eight by June 1, 1935 (R. 7; 26, 62). In November 1936, when the organizers of the Carolina Freight Carriers Corporation acquired the business and equipment of the Mauney Company, the number of usable motor vehicles had fallen to four (R. 46). Early in 1937 the Carolina Corporation, organized for the purpose, took over the trucking business and equipment (R. 7; 45–46).[2] At the time testimony was taken before the Commission's examiner, in October 1938, the number of cargo-carrying units in operation had increased to 17 (R. 7; 46).

On and for some time prior to June 1, 1935, appellee obtained its business through a freight brokerage firm which solicited shipments of all kinds of freight for several truck operators (R. 77–80, 127–139); a general manager of appellee testified that the company sought all kinds of freight in its carrying business (R. 60).

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[1] In the following statement, the references preceding the semicolons are to the Commission's findings and the succeeding references are to the supporting evidence.

[2] For the purposes of this litigation, Mauney Transfer Company, Inc., and Carolina Freight Carriers Corporation may be treated as synonymous; accordingly, the term "appellee" will hereinafter be used in reference to both.

Appellee in its registration certificate filed under the code of fair competition for the trucking industry on July 11, 1934, stated that 60 percent of its operations were those of a contract carrier and 40 percent were those of an "anywhere for hire" carrier (R. 7; 163–166). There was also testimony by representatives of shippers that appellee was supposed and expected to undertake to serve any points in the eastern seaboard area set out in appellee's application (R. 9; 44, 77, 82–83, 84, 94, 98); however, a general manager of appellee stated that the company did not solicit business north of New York (R. 10; 62).

Practically all of appellee's north-bound operations prior to June 1, 1935, consisted of transporting cotton yarn from Clover, South Carolina, and points in North Carolina within 75 miles of Cherryville, North Carolina, to Baltimore, Elks Mills, and Hagerstown, Maryland, Wilmington, Delaware, points in Pennsylvania on and east of United States Highway 11, points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, New Jersey, New York, Newburgh, and Clark Mills, New York, and about 10 points in Massachusetts and five points each in Rhode Island and Connecticut (R. 8; 62, 66, 71, 99, 155–163, 165). Shipments of some other commodities, including asbestos textile products (R. 8; 81, 82, 100), empty spools and boxes (R. 8; 58, 100), and rubber tires and tubes (R. 8; 44,

99–100), were also transported north-bound.[3] During the same period south-bound shipments consisted chiefly of petroleum products in containers (R. 9; 58–59, 93), linoleum (R. 9; 101), canned goods (R. 9; 59, 102), beer and ale (R. 9; 161–162), roofing material and screen wire (R. 9; 102, 116, 162), batteries (R. 102, 116), paper containers (R. 121), and hardware (R. 123);[4] these originated at a few points in Massachusetts, New Jersey, Pennsylvania, and Maryland, and were destined to a few points in Virginia and South Carolina and to points scattered throughout North Carolina (R. 8; 155–163).

In a sample period subsequent to June 1, 1935, during which approximately 430 shipments were handled by appellee, approximately 330 shipments consisted of the same commodities substantially carried during the earlier period, and in the same relative proportions; 85 shipments consisted of a few commodities (chiefly rayon) not handled before June 1, 1935 (R. 8; 166–178). The remaining

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[3] It does not appear that rubber tires or tubes were hauled after June 1, 1935 (R. 167–178).

[4] A few other commodities, such as stearic acid, cocoa, and candy, were carried south before June 1, 1935, but were not transported after that date.

The shipments of batteries, paper containers, and hardware were negligible both before and after June 1, 1935 (R. 155–163, 166–178).

Some textile machinery was hauled between points in Virginia, North Carolina, and South Carolina before the "grandfather" date (R. 56, 100, 115); afterward this carriage was no longer undertaken (R. 166–178).

15 shipments consisted of various commodities transported infrequently or which moved between points not served prior to June 1, 1935 (R. 9; 166–178). After that date, hauling of some of the commodities previously handled and trips to some of the places earlier served were not continued.

On January 24, 1936, appellee applied to the Interstate Commerce Commission for a certificate of public convenience and necessity authorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities * between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, and Massachusetts, those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of United States Highway 11, and those in New York east of Binghamton and south of Albany, over irregular routes, and between Cherryville, North Carolina, and Boston, Massachusetts, over a regular route through Henderson, North Carolina, Richmond, Virginia, Baltimore, Maryland, Philadelphia, Pennsylvania, and New York, New York (R. 7). Rail carriers in southern and official classification territories and cer-

* Appellee excepted from this category commodities of unusual value, those in bulk, those requiring special equipment (such as tank or refrigerator truck), those injurious to other lading, livestock, automobiles, and high explosives (not including small-arms ammunition).

tain motor carriers operating in the territory involved opposed the application (R. 7, 41, 42, 43) but offered no evidence (R. 2, 7). A hearing was conducted before an examiner of the Commission; subsequently exceptions, accompanied by supporting briefs, were filed by applicant and rail-carrier protestants to the proposed report submitted by the examiner (R. 7, 18). Division 5 of the Commission gave its decision in a report dated July 10, 1940:

> We find that applicant's predecessor in interest was on June 1, 1935, and continually since it and its predecessor have been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowen, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11, and points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J., (2) of asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass., (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth

Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction, (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina, (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C., (6) of canned goods from Baltimore, Md., to Shelby, N. C., (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes; that applicant is entitled to a certificate authorizing continuation of such operation; and that the application in all other respects should be denied (R. 10–11, 24 M. C. C. 309–310).

Motions by appellee for reopening and reconsideration were denied by the full Commission on November 4, 1940 (R. 15).

Appellee on November 26, 1940, filed in the District Court of the United States for the Western District of North Carolina, Charlotte Division, a complaint praying that the order of the Commission entered on July 10, 1940, be set aside and annulled insofar as the order and its accompanying report found that appellee had failed to establish a right to a certificate of public convenience and necessity as claimed in its application under the

"grandfather" clause of section 206 (a) of the Motor Carrier Act, 1935 (R. 1–6); it prayed that the Commission be directed on remand to review appellee's case "under a proper interpretation and construction of the Statute, and thereon issue a reformed order so as to permit the plaintiff to be granted franchise rights as a common carrier over irregular routes in accord with its just rights under the law" (R. 6). Answers were filed by the United States and by the Interstate Commerce Commission (R. 13–16). The case was heard upon final hearing before a court of three judges convened pursuant to the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220 (U. S. C., title 28, sec. 47) (R. 12–13). A transcript of all the evidence received before the Interstate Commerce Commission, certified by the Secretary of the Commission, was received in evidence by the District Court (R. 25), and is part of the record on appeal (R. 43–178).

On April 5, 1941, the court rendered its opinion, holding that the prayer of the complaint should be granted (R. 25–34); the court made findings of fact and announced conclusions of law (R. 22–24), and on the same day entered its final decree (R. 34). A petition for appeal was presented by the United States and the Interstate Commerce Commission on May 29, 1941, and was allowed by the District Court on the same day (R. 35–38).

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that the Commission was without power in granting the certificate of public convenience and necessity to restrict its authorization to the classes of commodities in fact carried in substantial quantity by appellee on and since June 1, 1935, and to the places in fact substantially served by appellee on and since that date.

2. In setting aside and annulling the order of the Commission.

SUMMARY OF ARGUMENT

Decision of the present case is controlled by *Loving* v. *United States*, 32 F. Supp. 464, affirmed *per curiam*, 310 U. S. 609. The "grandfather" clause contained in section 206 (a) of the Motor Carrier Act, 1935, was intended to secure continuance of motor vehicle carrier businesses established on June 1, 1935, in the operations then and continuously since conducted by them. Appellee had actually engaged substantially in the transportation of a few classes of commodities between a few regularly visited places, and incidentally in the carriage of other scattered commodities and between other points. The Interstate Commerce Commission's findings of fact in this regard are supported by the record, and are conclusive. Only substantial transportation satisfies the statutory requirement of bona fide operation, and ap-

pellee's certificate was correctly restricted accordingly. An alleged holding out by appellee to render service much more extensive in commodities and places would not enlarge its "grandfather" rights under the statute beyond those determined by the Commission. The Commission has not discriminated against appellee as an irregular-route carrier, favoring regular-route common carriers. The authorization given appellee by the Commission is virtually as broad as the kind of business actually conducted substantially and incidentally by appellee, and regardless of the effect of the Commission's order on appellee's profits appellee may not obtain larger rights than the express provisions of the statute allow.

ARGUMENT

THE COMMISSION IS EMPOWERED UNDER THE STATUTE TO LIMIT APPELLEE'S AUTHORITY TO THE COMMODITIES IN FACT CARRIED IN SUBSTANTIAL QUANTITY AND PLACES IN FACT SUBSTANTIALLY SERVED ON AND AFTER THE "GRANDFATHER" DATE

Section 206 (a) of the Motor Carrier Act, 1935, forbids common carriers by motor vehicle from engaging in interstate operations without a certificate of public convenience and necessity to be issued by the Interstate Commerce Commission under section 207 (a) of the Act. The "grandfather" clause of section 206 (a) provides, however, that:

> * * * if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, * * * the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation * * *.

The court below held that appellee could bring its case within the terms of this proviso and become entitled to a certificate as applied for without showing that it had operated actually and substantially on and after June 1, 1935, in transporting the commodities and serving the places named in the application. The opinion reasons (R. 29–30) that since appellee conducted a substantial volume of business in the area applied for and held itself out to the public as willing and able to carry general freight between any points in that area[a] it qualified under the statutory clause for an authorization as extensive as that requested in its application. We think, on the contrary, that the requirement of "bona fide operation as a common carrier * * * within the territory for which application is made" is not

[a] The District Court made a finding of fact to this effect (R. 22–23), although the Commission omitted to make any finding on the issue (R. 10). In this brief we concede, *arguendo*, that appellee did make its alleged representations of ability and willingness to serve. It is our view that appellee's holding out, of itself, is immaterial.

satisfied, to the extent here claimed, by so scant a showing.

1. *The Loving case.*—The opinion of the court below characterized the Commission's view of appellee's case as "quite without precedent" (R. 31). We think, however, that it is clearly supported by the existing judicial authorities,[7] and that previous litigation in the federal courts governs this case.

In *Loving Common Carrier Application,* 12 M. C. C. 571, applicants sought a certificate for carriage of general commodities throughout Oklahoma, Texas, Kansas, Colorado, and New Mexico. Their irregular-route operations had consisted chiefly in transporting fruits and vegetables, batteries and parts, fiberboard boxes, glass, oil in packages, and canned goods; they had carried some poultry, cottonseed cake, burlap bags and other freight in insubstantial quantities. The points actually served by applicants were principally in Oklahoma and eastern Colorado. The Commission issued a certificate accordingly, ruling that applicants' holding out to transport general

[7] Several of the states have had local motor carrier legislation containing saving clauses substantially like that of the federal Motor Carrier Act. State court decisions construing the "grandfather" clauses of those state laws accord altogether with the interpretation given to section 206 (a) by the Interstate Commerce Commission. *E. g., Gulf M. & O. R. Co.* v. *Luter Motor Express,* 1 So. (2d) 231 (Miss.); *Matter of Santini Bros., Inc.,* v. *Maltbie,* 260 App. Div. 545; *Whinney* v. *Public Serv. Comm.,* 116 Pa. Super. 472.

commodities in all of the states named in the application could not enlarge applicants' "grandfather" rights beyond the scope of substantial service that they had been performing. The Commission stated:

> * * * In considering numerous applications presenting like issues, we have held that an applicant must have been in actual operation on the statutory date, and that a holding out to serve is not sufficient in and of itself to establish bona fide operations as that term is used in section 206 (a), in the absence of evidence of operations consistent with such holding out. * * * (12 M. C. C. 571, at 575.)

On application to a federal district court to suspend the order, applicants' complaint was dismissed, the court adopting the theory of the Commission in interpreting the saving clause in section 206 (a). *Loving* v. *United States,* 32 F. Supp. 464.

The opinion of the three-judge court rejected the applicants' contentions by saying:

> * * * We believe that bona fide operation includes actual operations conducted carried on by a carrier prior to June 1, 1935, and subsequent thereto, and is not to be limited to actual physical operations conducted on the 1st day of June, 1935. A mere offer to perform the service, without any actual performance thereof, on and prior to the "grandfather" date, is not sufficient to

> authorize the issuance of a certificate of convenience and necessity by the Commission. An occasional service, infrequently performed prior to June 1, 1935, unless such service is seasonal, is insufficient, as there must be a bona fide operation to warrant the issuance of a certificate by the Commission without proof as to the necessity and convenience to be served by the granting of such authority. * * * (32 F. Supp. 464, at 466.)

On appeal to this Court, the judgment was affirmed *per curiam*, 310 U. S. 609. The report of the Commission, the opinion of the district court, and appellants' Statement as to Jurisdiction (No. 879, October Term, 1939, pp. 4–10), filed in this Court, join to show that the issues presented there were the same as those raised on this appeal. We think that case decisive here.[8]

2. *Analysis of the statute.*—In construing the language of section 206 (a), regard must be had for the Congressional purpose in enacting this legislation; the Motor Carrier Act was intended as federal regulation remedial of a disordered

[8] In *Eastern Carrier Corp.* v. *United States*, 31 F. Supp. 232, a trucking company had sought authority to transport general commodities over specified routes; the Commission found that with the exception of a few specific commodities the applicant's transportation had been only sporadic, and, accordingly, denied in part the application for a certificate. The District Court dismissed the complaint attacking the Commission's order, upholding the Commission's construction of the statute.

condition in interstate commercial motor transportation,[9] and, accordingly, the exemption must be read narrowly, in harmony with the general purpose of Congress. See *McDonald* v. *Thompson*, 305 U. S. 263, 266. Insertion of the "grandfather" clause as an exception to the operation of section 206 (a) was a measure of fairness designed to permit the continuance of enterprises already established on June 1, 1935. See *United States* v. *Maher*, 307 U. S. 148, 153. But it could not be supposed that this dispensation extended beyond the transportation service being rendered by a carrier at and after the "grandfather" date, both with respect to commodities carried[10] and places served. This intended limitation is apparent not only from the terms of the "grandfather" proviso but from the provisions of section 208 (a) of the Act, which require that every certificate "shall specify the service to be rendered and * * * the territory within which * * * the motor carrier is authorized to operate." A construction which effected any other result would largely frustrate the regulatory purpose of the statute.

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[9] See section 202, Motor Carrier Act, August 9, 1935, c. 498, 49 Stat. 543 (U. S. C., Supp. V, title 49, sec. 302) (preamble).

[10] Section 203 (a) (14) of the Act defines common carrier by motor vehicle as "any person who or which undertakes, * * *, to transport passengers or property, or any class or classes of property, * * *."

The Interstate Commerce Commission has consistently taken the view in administering the Motor Carrier Act that the "grandfather" proviso affords sanction to carriers only with reference to commodities the transportation of which formed a *substantial* part of their business and to places *substantially* served by the enterprise. *Slagle Contract Carrier Application,* 2 M. C. C. 127; *Jersey Coast Transfer Co., Inc., Common Carrier Application,* 9 M. C. C. 780; *Loving Common Carrier Application,* 12 M. C. C. 571. We believe that this is a sound and essential interpretation of the statute.

Section 204 (c) of the Motor Carrier Act authorizes the Commission to classify motor vehicle common carriers; illustrative of the major types of operation conducted by businesses in the industry are the commodity classifications which the Commission has established: (1) general freight, (2) household goods, (3) heavy machinery, (4) liquid petroleum products, (5) refrigerated liquid products, (6) refrigerated solid products, (7) dump trucking, (8) agricultural commodities, (9) motor vehicles, (10) armored-truck service, (11) building materials, (12) films and associated commodities, (13) forest products, (14) mine ore not including coal, (15) retail-store delivery service, (16) explosives or dangerous articles, (17) specific commodities, not subgrouped. *Classification of Motor Carriers of Property,* 2 M. C. C. 703.

The commercial practice among motor carriers has been that the operations of a particular carrier are limited to definite routes, points, or a territory and to the transportation of one or not more than a few identifiable classes of commodities. See *Eastern Carrier Corp.* v. *United States,* 31 F. Supp. 232, 238. The practice of the industry, reflected by this statement and in the Commission's classification, has important bearing on the meaning of the "grandfather" clause exception. See *United States* v. *Maher,* 307 U. S. 148, 155. A carrier of agricultural commodities and building materials may, of course, transport occasionally a load of household goods to avoid making a return trip empty; but the carriage of household goods would be merely incidental to the main lines of business engaged in by such a carrier. To grant to the carrier a "grandfather" certificate on the basis of incidental as well as substantial transportation would permit it to shift its main business into many diverse incidental lines, with the result that the carrier would secure an authorization far exceeding that contemplated by Congress in enacting the saving clause in section 206 (a).[11] The carrier would then be in a

[11] A system of granting certificates which authorized chief transportation of one or a few classes of commodities and incidental transportation of many more would be administratively impracticable, and, we think, certainly was not intended by Congress. *Eastern Carrier Corp.* v. *United States,* 31 F. Supp. 232, 238.

position to trench upon fields occupied by other "grandfather" operators, seriously jeopardizing effectiveness of the statute's over-all regulatory policy.

The same considerations apply with equal force to the question of places served. It is recognized that many carriers by motor vehicle do not maintain regular routes, but instead serve points in transportation over irregular routes. A proper interpretation of the word "territory" appearing in the statute in reference to these carriers would not of necessity include all points topographically enclosed within the lines of transportation actually travelled by the carrier's vehicles or all points at which the carrier had loaded or discharged shipments; rather, the "territory" would consist of the places substantially served by the carrier. Such a construction would not preclude authority to serve all points in a given area, when substantial service to enough representative points throughout the area is established. See *Howard Hall Co., Inc., Common Carrier Application,* 24 M. C. C. 273, 274, *Howard Hall Co., Inc.,* v. *United States,* 38 F. Supp. 556. In the present case the Commission in fact granted authority to appellee to operate from all points in a number of counties in North Carolina (R. 10). Cf. *George Cassens & Sons Common Carrier Application,* 1 M. C. C. 771, 774–775.

Whether particular operations, with respect to goods transported or places visited, are substantial rather than incidental in character is a question of judgment, for the Commission to determine on the basis of its special knowledge and experience in the motor carrier industry.

3. *This case.*—The Commission found in its report (R. 9):

> On the basis of all the evidence, the commodities shown to have been handled with a degree of regularity both prior to and since June 1, 1935, are cotton yarn, petroleum products, linoleum, canned goods, beer, ale, roofing, screen wire, asbestos textile products, materials used in the manufacture of asbestos textile products, and empty spools and boxes.

If supported by substantial evidence in the record, this finding, impliedly excluding the carriage of other types of goods, is not open to attack.[12] *United States* v. *Maher;* 307 U. S. 148, 153–154, 155. Plainly, the great bulk of shipments carried by appellee consisted of cotton, oil, and a very small number of other commodities. The carriage on and

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[12] We do not understand the court below to have held or appellee to contend that the finding is unwarranted.

From an examination of the exhibits and a reading of the testimony before the Commission it would appear that the report erred, if at all, on the side of liberality to appellee in finding substantial traffic in such commodities as screen wire, roofing, and beer and ale.

after the "grandfather" date, of batteries, machinery; and other freight excluded by the Commission was incidental and not substantial in relation to the volume of appellee's business. Appellee's business was properly classifiable as the transportation of "specific commodities, not subgrouped." It would be properly classifiable as a carrier of general freight and entitled to a correspondingly extensive "grandfather" certificate only if the shipments carried by appellee were distributed among a large number of commodities each of which constituted a substantial contribution to appellee's business in relation to the whole.[13] Cf. *Fisher Common Carrier Application*, 14 M. C. C. 655. That is not the situation when a small number of commodities greatly predominate. It is not, of course, essential to the grant of a certificate covering general freight that each and every commodity within that description has actually been carried. *Reliance Trucking Co., Inc., Contract Carrier Application*, 4 M. C. C. 594, 595. The position taken in the

[13] Our argument here is not rested on the fact and contents of the Commission's Classification Report; as pointed out in the report, its categories are intended as tentative patterns, for general purposes, and not to be inflexibly followed. See *Classification of Motor Carriers of Property*, 2 M. C. C. 703, 704, 714. We have used some of the report's terms for convenience and uniformity of expression, as illustrative of the principles here advanced, which we believe essentially the same as those underlying the Commission's actions in its administration of the Motor Carrier Act.

opinion of the District Court (R. 31) that such a requirement is the only alternative to the result reached by the court below is untenable.

The Commission also made findings (R. 10) concerning the geographical area in which appellee conducted substantial trucking operations:

> On the basis of all the evidence, it is clear that no substantial showing of service has been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the states included in the application.

This finding and its correlative, concerning the places substantially served by appellee (R. 10–11), are conclusive, since warranted, and their effect in law is to restrict appellee's right to a certificate of public convenience and necessity under the "grandfather" clause. The reasons stated above for a similar result with respect to commodities are likewise operative here.

Because of the nature of appellee's business, appearing from the facts of its particular case, the Commission has found it appropriate to state appellee's "territory" in terms of points of origin and destination rather than to delimit an area of operations. Cf. *Jersey Coast Transfer Co., Inc., Common Carrier Application,* 9 M. C. C. 780, 783 (integral area delimited). In the circumstances of this case, the method employed by the Commission is clearly the most accurate available to

represent appellee's "territory"; for the record shows that appellee's transportation was of textiles and empty spools and boxes, from North Carolina to a few regularly visited places in the middle Atlantic coast area, and of oil, linoleum, canned goods, beer and ale, roofing, and screen wire from certain points in the latter area to points in North Carolina and to Columbia, Greenville, and Spartanburg, South Carolina.

4. *Representation to the public.*—On exceptions to the examiner's proposed report, submitted after hearing, appellee contended that it was entitled to a certificate as applied for because it had held itself out to the public to perform transportation service of general freight between any points in the area named in the application.[14] Whether appellee did make the claimed representations is in doubt, as the evidence on this point is conflicting (Statement, *supra*, p. 4). The Commission, in its decision, made no finding as to appellee's holding out, and ruled that in any event

> authority to transport general commodities throughout a wide territory, over irregular and unspecified routes, pursuant to the "grandfather" clauses of the act, should be

[14] It is at least doubtful whether appellee, with eight trucks on June 1, 1935 (R. 26, 62), could have served with any regularity the geographical trade claimed to have been solicited between all points in the coast states from South Carolina to Massachusetts. Such operation with so limited a number of vehicles would hardly have been economically efficient.

granted to a carrier only when such carrier's right thereto has been proved by substantial evidence. * * * On the basis of all the evidence, it is clear that no substantial showing of service has been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the States included in the application (R. 10).[15]

[15] In *Alton R. R.* v. *United States* and *United States* v. *Alton R. R.*, Nos. 110 and 267, this Term, the Commission granted a carrier authority to transport new automotive vehicles from Detroit to all points in several named states (*Fleming Common Carrier Application*, 8 M. C. C. 469, 475–476); in fact, the carrier had been delivering shipments to only a very few points in each state, although the Commission found that he had been holding himself out to carry to any points in the states (*id.* at 474). It is true that delivery to three places only in states such, for example, as Oregon or Kentucky (Record, Nos. 110 and 267, pp. 93, 94, 112–113, 114) would not constitute transportation to enough representative points to entitle a carrier in the *Carolina* type of situation to a certificate covering the whole state as a territory; to this extent the Commission in passing on the Fleming application might appear to have accorded weight to the carrier's holding out as an independent factor.

But the Commission's action there rests ultimately upon the fact that the carrier had, in effect, been serving with the product of a single industry the areas for which the points actually visited were distribution centers. Points of distribution are limited in number, are frequently shifted, and sales at one place are subject to considerable fluctuation in volume and frequency (*Fleming Common Carrier Application*, *supra*, at 473); only by giving the carrier authority to serve all points in an area could the Commission ensure that a carrier such as Fleming would be

The District Court embraced appellee's position and held (R. 29–30) that appellee was entitled to the certificate applied for since it had done a substantial business in the territory named in the application and held itself out as able and willing to carry general commodities between all points in the area. We think that such a standard of "operation," setting separate store upon the carrier's representations, does not accord with the statute and that the true criterion is whether an applicant has in substance *actually* been engaged in carrying general freight throughout the territory specified;[16] as pointed out earlier (*supra*, p. 21), this standard does not require that each commodity included in the term "general freight" has been transported and each point in the terri-

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licensed to perform in substance the transportation in which he engaged on and after the "grandfather" date.

Because of the special marketing conditions which prevail in the distribution of new automobiles from manufacturer to consumer, the Commission's apparent ruling in the *Alton* case on the significance of holding out would not be applicable by analogy here. See *id.* at 472–474, 475.

[16] It may be significant that Congress in 1940 amended section 203 (a) (14) of the Motor Carrier Act to read:

"The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, * * *." Section 18 (a), Act of September 18, 1940, c. 722, 54 Stat. 920.

Compare the earlier definition, *supra*, p. 16, n. 10. The legislative history of the amending statute is silent on reasons for the change.

tory served. It requires that general transportation and service have been in fact performed as the staple and distinguishing feature of the applicant's business. The Commission has framed its test as follows:

> * * * The question is whether there has been operation within the "grandfather" period consistent with the holding out in the natural and normal course of business. (*Reliance Trucking Co., Inc., Contract Carrier Application*, 4 M. C. C. 594, 595.)[17]

The Government's position in this regard is supported by the interpretation given to the statutory language by this Court in *McDonald* v. *Thompson*, 305 U. S. 263, where the opinion stated (p. 266):

> * * * The expression, "in bona fide operation," suggests absence of evasion, *excludes the idea that mere ability to serve as a common carrier is enough, includes actual rather than potential or simulated service*, and in context implies recognition of the power of the State to withhold or condition the use of its highways in the business of transportation for hire. * * * [Italics supplied.][18]

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[17] This statement of the test was made concerning a *common* carrier, and has subsequently been repeated by the Commission in common carrier cases. *Fleming Common Carrier Application*, 8 M. C. C. 469, 473; *Loving Common Carrier Application*, 12 M. C. C. 571, 575.

[18] In our argument we have treated this case as raising, in part, questions of law as to the proper construction of the Motor Carrier Act. On the other hand, the case may be

5. *Discrimination.*—The Commission in its report stated (R. 10) in part explanation of its order limiting appellee to operations substantially and in fact performed on and after June 1, 1935:

> * * * Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service. * * *

---

viewed as presenting only an issue upon which the judgment of the administrative agency, if warranted in the record, would be accepted as final by the reviewing judicial tribunal: whether the particular facts have brought appellee within the statutory language, "in bona fide operation as a common carrier * * * within the territory for which application is made." See *Eastern Carrier Corp.* v. *United States*, 31 F. Supp. 232, 238; *Loving* v. *United States*, 32 F. Supp. 464, 467. The doctrine has been established by this Court in closely analogous situations. *Gray* v. *Powell* (No. 18, this Term, decided December 15, 1941) ("producer"); *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 351 ("member of a crew"); *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125 ("control"); *Shields* v. *Utah Idaho Central R. R.*, 305 U. S. 177 ("interurban"). Under this view of the present case, the function of the District Court on a review of the Commission's order would be limited to the inquiry whether the determination of the Commission was supported by substantial evidence and had a rational basis in law. Our argument on this score is developed in the Brief for the Petitioners in *Gray* v. *Powell*, No. 18, this Term, pp. 11–13, 15–25.

From this expression the District Court inferred a discrimination by the Commission against irregular-route carriers and in favor of regular-route carriers with respect to the criterion of substantial actual operation as a condition on the granting of certificates under the "grandfather" clause of section 206 (a); the court below specified this alleged discrimination as a separate ground for setting aside the Commission's order. A reading of the Commission's report discloses that the quoted sentence possesses no such connotation. Rather, it appears from the Commission's decisions in other cases that the same criterion is applied to regular-route carriers. *Maher Common Carrier Application,* 3 M. C. C. 479; *Maher* v. *United States,* 23 F. Supp. 813, reversed *sub nom. United States* v. *Maher,* 307 U. S. 148. This ground of the District Court's decision is, therefore, altogether without foundation.

6. *Economic consequences of the Commission's order on appellee:*—Equally insubstantial is the alleged effect of the court's finding (R. 23) that the Commission's order will prohibit profitable operation by appellee and force it to retire from business. It may be stated at the outset that such a finding is surely of questionable soundness, when it is remembered that appellee will be able to continue the same operations which constituted virtually all of its business before the Commis-

sion's order and may expand quantitatively those operations. Regardless of the finding, it is clear that even if supported it could not serve to enlarge the statutory "grandfather" rights which Congress has conferred on appellee. Cf. *United States* v. *Maher, supra* (upholding Commission's order to cease and desist from all operations). Those rights were created only by dispensation from the regular requirements which the Act sets up for engaging in interstate transportation. If an applicant has not succeeded in proof of its claim to a "grandfather" certificate as extensive as prayed for, it may always apply to the Commission for that authority on the ground that the service sought to be performed "is or will be required by the present or future public convenience and necessity." Section 207 (a), Motor Carrier Act, 1935, Act of August 9, 1935, c. 498, 49 Stat. 551 (U. S. C., Supp. V, title 49, sec. 307 (a)); cf. *Howard Hall Co., Inc., Eastern Territory Extension,* No. MC–42318 (Sub-No. 1), Record, *Howard Hall Co., Inc.,* v. *United States,* No. 210, this Term, pp. 35–42.

CONCLUSION

The Commission properly limited appellee's certificate of authority to the commodities in fact carried by it in substantial quantity and to the places in fact substantially served by appellee on and after the "grandfather" date. It is therefore respectfully submitted that the decree of the

District Court setting aside and annulling the Commission's order is erroneous and should be reversed.

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DECEMBER 1941.

APPENDIX

The relevant provisions of the Motor Carrier Act, 1935, Act of August 9, 1935, c. 722, 49 Stat. 543, 544, 551, 552, in force at the date of the Commission's order, July 10, 1940, are as follows:

DECLARATION OF POLICY AND DELEGATION OF JURISDICTION

SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part. (U. S. C., Supp. V, title 49, sec. 302 (a).)

* * * * *

SEC. 203. (a) As used in this part—

* * * * *

(14) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, * * * (U. S. C., Supp. V, title 49, sec. 303 (a) (14)).

* * * * *

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SEC. 206. (a) No common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations; *Provided, however,* That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate with-

out requiring further proof that public convenience and necessity will be served by such operation, * * *. (U. S. C., Supp. V, title 49, sec. 306 (a)).

TERMS AND CONDITIONS OF CERTIFICATE

SEC. 208. (a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in the case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; * * * (U. S. C., Supp. V, title 49, sec. 308 (a)).

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No. 197

In the Supreme Court of the United States

OCTOBER TERM, 1941

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

CAROLINA FREIGHT CARRIERS CORPORATION, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

INDEX

	Page
OPINION BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
STATUTES INVOLVED	4
STATEMENT	4
Proceedings in Court Below	11
SPECIFICATIONS OF ERRORS TO BE URGED	12
SUMMARY OF ARGUMENT	13
ARGUMENT	16
I. The Commission correctly interpreted the grandfather clause as authorizing certificates for carriage of general commodities throughout a wide area, over irregular and unspecified routes, only when it can find from the evidence that the carrier's right thereto has been proved by a substantial showing of service rendered sufficient to establish bona fide operations	16
The decision in *Loving* v. *United States*, 310 U. S. 609	16
The application in this case	19
Commission's decision	20
Decision of court below	22
Effect of court's decision	23
Interpretation of grandfather clause	25
Principles enunciated by Commission in similar cases	27
Effect of "holding out"	30
Present case decided by Commission in accordance with established principles	33
Principles sustained by Federal and State courts and by this Court	35
II. The court below erred in finding as a fact that appellee operated as a carrier of general commodities throughout a wide territory, and in holding, upon the basis of such finding, that the order limiting the certificate to the commodities carried and points served transcended the Commission's power	38

ARGUMENT—Continued. Page

III. The court below erred in holding the order invalid on the separate ground that the Commission considered the effect upon regular-route carriers from grant, upon insubstantial evidence, of certificates to irregular-route carriers 47

CONCLUSION 51

APPENDIX 52

TABLE OF CASES

Aero etc. Application, 20 M. C. C. 633 32

Coordination of Motor Transportation, 182 I. C. C. 263 36

Crescent etc. Application, 2 M. C. C. 313 30

Dixie etc. Application, 17 M. C. C. 735 34

Eastern Carrier Corp. Common Carrier Application, 14 M. C. C. 430 ..... 30, 35

Eastern Carrier Corp. v. *U. S.*, 31 F. Supp. 232 ..... 30, 35

Eucalyptus Wood Co., Application, 16 M. C. C. 468 31

Fleming Common Carrier Application, 8 M. C. C. 469 32

Gray v. *Powell*, No. 18, decision rendered Dec. 15, 1941 15

Gulf, M. & O. R. Co. v. *Luter Motor Express*, 1 So. (2) 231 37

Howard Hall Co. v. *U. S.*, 38 F. Supp. 556 32

Howard Hall etc. Application, 24 M. C. C. 273 32

Interstate Commerce Commission v. *Union Pacific R. Co.*, 222 U. S. 541 19

Jones Application, 19 M. C. C. 687 ..... 32, 48

Karn's Transfer, Inc., Extension—Virginia, 21 M. C. C. 29 45

Keystone Transp. Co. etc., 19 M. C. C. 475 ..... 48, 50

Langer Application, 23 M. C. C. 302 30

Lett Application, 26 M. C. C. 159 30

Los Angeles Switching Case, 234 U. S. 294 19

Loving Common Carrier Application, 12 M. C. C. 571 ..... 16, 30

Loving v. *United States*, 310 U. S. 609, 32 F. Supp. 464 ..... 2, 13, 16, 35

McDonald v. *Thompson*, 305 U. S. 263 ..... 2, 13, 18, 19, 27

Merchants etc. Application, 21 M. C. C. 93 ..... 29, 32

Motor Bus and Motor Truck Operation, 140 I. C. C. 685 ..... 36, 45

Piedmont & Nor. Ry. v. *Comm'n*, 286 U. S. 299 27

Powell Application, 9 M. C. C. 785 30

Reliance Truck Co. Application, 4 M. C. C. 594 31

Santini Bros. v. *Maltbie*, 23 N. Y. Supp. (2d) 566 38

System Arizona Exp. Service Application, 4 M. C. C. 129 28

Texas & Pac. Ry. v. *Gulf etc. Ry.*, 270 U. S. 266 45

Union Bus Lines, Inc.—Purchase—Amberson, 5 M. C. C. 201 24

U. S. v. *Ill. Cent. R. R.*, 263 U. S. 515 45

United States v *Maher*, 307 U. S. 148 ..... 2, 13, 15, 19, 40

Page

Whinney v. Public Serv. Comm., 176 A. 753 38
Yellow Truck Lines Inc.—Purchase F & H Truck Lines 35
M. C. C. 773 24

STATUTES CITED

Motor Carrier Act, 1935:
Section 202(a) 27, 50, 52
Section 203(a) (14) 27, 52
Section 206(a) 4, 53
Section 207(a) 4, 45, 55
Section 208 ..... 25, 56
Section 210 56
Section 210(a) 57
Transportation Act, 1940:
Preface, "National Transportation Policy." 50, 57

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the District Court (R. 25–34) is reported in 38 F. Supp. 549. The report of the Interstate Commerce Commission (R. 6–11) appears in 24 M. C. C. 305.

JURISDICTION

The final decree of the District Court was entered April 5, 1941 (R. 34). Petition for appeal, filed May 29, 1941, was allowed the same day (R.

35). The jurisdiction of this Court is conferred by the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219, U. S. C., Title 28, Secs. 45 and 47a); Section 238, Judicial Code, as amended by Act of February 13, 1925 (c. 229, 43 Stat. 936, par. (4), U. S. C., Title 28, sec. 345); and by section 205 (h) of the Motor Carrier Act, 1935 (c. 498, 49 Stat. 543, U. S. C., Supp. V to 1934 Ed., Title 49, sec. 305 (h)).

QUESTIONS PRESENTED

The Interstate Commerce Commission by order granted, under the "grandfather" clause of section 206 (a) of the Motor Carrier Act, 1935,[1] a certificate of public convenience and necessity authorizing appellee to continue operations as a common carrier by motor vehicle between certain points in North Carolina, on the one hand, and, on the other, certain territories and points in Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts, for the transportation of the commodities which appellee had carried with some degree of regularity on the grandfather date (June 1, 1935) and thereafter; denying in other respects appellee's application for a certificate authorizing transportation of "general commodities" (all

[1] Quoted in Appendix, *infra*, p. 53; cf. *McDonald* v. *Thompson*, 305 U. S. 263; *United States* v. *Maher*, 307 U. S. 148; *Loving* v. *United States*, 12 M. C. C. 571, 32 F. Supp. 464, 310 U. S. 609.

commodities suitable for transportation in an ordinary truck, with certain exceptions) from and to all points in a territory extending along the Atlantic seaboard from South Carolina to Massachusetts. The question presented is the validity of this order. Subordinate questions are:

(1) Whether the Commission correctly interpreted the grandfather clause as permitting the issuance of a certificate authorizing transportation of general commodities throughout a wide area, over irregular and unspecified routes, only when the carrier's right thereto has been proved by a substantial showing of service rendered sufficient to establish bona fide operations. A subordinate question in this connection is whether bona fide operations are established by a mere holding out to serve generally, unaccompanied by proof of operations consistent with such holding out.

(2) Whether the court below erred in weighing the evidence and finding as a fact, contrary to the Commission's finding, that appellee operated as a carrier of general commodities throughout a wide territory and in holding, upon the basis of such finding, that because the order failed to provide for a certificate authorizing such operation, it transcended the Commission's power.

(3) Whether the court below erred in holding the order invalid on the separate ground that the Commission considered the effect upon regular-

route carriers from grant, upon insubstantial evidence, of certificates to irregular-route carriers.

STATUTES INVOLVED

The relevant provisions of the Motor Carrier Act, 1935, in effect on the date of the Commission's order, July 10, 1940, are set forth in the Appendix, *infra*, pp. 52–58.[1]

STATEMENT

The Motor Carrier Act, 1935, in section 206 (a), forbids common carriers by motor vehicle from engaging in interstate operations without a certificate of public convenience and necessity to be issued by the Interstate Commerce Commission under section 207 (a) of the Act. The latter section requires a finding by the Commission that the granting of such a certificate is demanded by public convenience and necessity. But under the proviso of section 206 (a)—the grandfather clause—the Commission must issue "such certificate without requiring further proof that public convenience and necessity will be served" by an applicant or predecessor in interest who was "in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time."

[1] The Motor Carrier Act was amended, and made Part II of the Interstate Commerce Act, by Transportation Act, 1940, 54 Stat. 898, approved September 18, 1940.

Appellee's predecessor, Mauney Transfer Co., Inc., of Cherryville (Gaston County), N. C., filed application with the Commission, solely under the grandfather clause, for a certificate authorizing operation as a common carrier of "general commodities"—that is, all commodities except those of unusual value, those in bulk, those requiring special equipment such as tank or refrigeration trucks, those injurious to other lading, livestock, automobiles, and high explosives—between all points in a broad belt extending from and including South Carolina, on the south, to and including Massachusetts, on the north, over irregular routes.[2] Competing rail and motor carriers operating in the territory filed protests against the issuance of the certificate sought (R. 7).

In November 1936, while the application was pending, two individuals bought the business and rights of Mauney Transfer Co.; in March 1937, they organized appellee corporation, which has conducted the operation since that time. Appellee was substituted as the applicant[3] (R. 7, 48, 49, 51). Hearing was held in October 1938. Appellee introduced evidence in support of the application (R. 40–178).

[2] The application also sought a certificate covering transportation of general commodities between Cherryville, N. C., and Boston, Mass., over a regular route, but this part of the application was abandoned at the hearing (R. 7, 154).

[3] Hereinafter the term "appellee" will refer to appellee's predecessor or to appellee, depending upon whether the time involved was before or after March 1937.

On July 10, 1940, the Commission, Division 5, issued a report, *Carolina Freight Carriers Corp. Common Carrier Application,* 24 M. C. C. 305 (R. 6–11), briefly stating the facts and its conclusions thereon. The report found that appellee was not a bona fide carrier of general commodities from and to all points within the extensive area claimed in the application; that it was entitled to a certificate covering the commodities which it had handled from and to the territories and points which it had served, on and subsequent to the grandfather date, with a degree of regularity sufficient to indicate bona fide operation. The report provided for the issuance of a certificate accordingly (R. 11). With the report, an order was issued denying the application in other respects [4] (R. 11).

Motor-carrier operations were commenced by appellee about 1931. It then had about three trucks, which number had increased to six or eight on June 1, 1935, and at the time of the hearing it had about 16 cargo-carrying units in operation [5] (R. 7).

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[4] The report as printed in the record (R. 6–11) contains many errors. For this reason, and since this Court takes judicial notice of the published reports of the Commission, this brief follows and quotes from the report as published in 24 M. C. C. 305, although references are given to the record print.

[5] Appellee's president testified that at the time he purchased the operating rights of Mauney Transfer the latter had only 3 or 4 motor vehicles that were in shape to operate.

Appellee was registered under the code of fair competition for the trucking industry on July 11, 1934. The certificate of registration, which was submitted in evidence (R. 7, 163–166), contains statements to the effect that 60 percent of appellee's operations were those of a contract carrier and 40 percent of its operations were those of an "anywhere for hire" carrier; that 90 percent of its traffic consisted of textile products [cotton yarn] and 10 percent consisted of other freight (R. 7).

All operations have been conducted on a "call on demand" basis, over irregular routes (R. 8).

The Commission found that appellee was principally engaged in the transportation northbound of cotton yarn shipped by mills at Cherryville, N. C., and vicinity. This commodity was shipped principally to points in eastern Pennsylvania, to New York City and adjacent points in New Jersey. There were also shipments to Hagerstown, Md., and to Pawtucket and Providence, R. I. The certificate authorizes continuance of this transportation.

Appellee also transported northbound a class of commodities—asbestos textile products (cloth, yarn, packings, tapes, tubings, and many others, R. 82)—for a manufacturer at Charlotte, N. C. They were shipped to factories in the north using such products in the manufacture of various articles, such as brake linings (R. 82, 84). The destinations were Philadelphia and North Wales, Pa.,

Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., Boston and Hudson, Mass. (R. 11). The only remaining commodities transported northbound regularly were empty spools and boxes. They were shipped by the same manufacturer at Charlotte, and moved to Harrison and Perth Amboy, N. J. (R. 8, 9). Continuance of this transportation from Charlotte to the northern destinations is authorized by the certificate.

Concerning the south-bound movement, the Commission found that supplies and materials used in making asbestos textile products were transported from Harrison and Perth Amboy, N. J., to the Charlotte manufacturer; that "petroleum products in containers were transported from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to points throughout North Carolina. Also transported were linoleum from Paulsboro, N. J., Marcus Hook, and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C.; canned goods from Baltimore, Md., to Shelby, N. C.; beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and roofing and screen wire from York, Pa., to points in North Carolina" (R. 9, 10). The certificate issued covers all this south-bound transportation. There were shipments of a few other commodities between points not served prior to the grandfather date, or which have been handled infrequently (R. 8, 9).

Appellee contended that it was entitled to the certificate applied for on the ground that it had held itself out to transport general commodities throughout the claimed territory. This contention was rejected by the Commission for the reason that, as it had frequently held in other cases, authority to transport general commodities throughout a wide territory, over irregular and unspecified routes, pursuant to the grandfather clause of the Act, should be granted to a carrier only when such carrier's right thereto has been proved by substantial evidence; and that, in this case, there was no substantial showing of service to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the states included in the application (R. 10).

"To do otherwise," the Commission said, "would create the very ills which regulation is designed to alleviate, namely, congestion of highways, destructive rate practices, and unbridled competition. Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service" (R. 10).

The Commission also rejected the contention that a carrier who has filed an application under

the grandfather clause may not be restricted to the transportation of the commodities carried during the grandfather period. After observing that section 203 (a) (14) of the Act contemplates that a common carrier may transport only "a class or classes of property," the Commission pointed out that in numerous previous cases it had found that "the authority issued under the 'grandfather' clauses of sections 206 (a) and 209 (a) of the act should reflect any limitation in the undertaking of common or contract carriers as indicated by the service actually rendered on and since the statutory dates" (R. 10).

The ultimate finding was as follows:

> We find that applicant's predecessor in interest was on June 1, 1935, and continuously since it and its predecessor have been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11,* and points

*This highway runs in a general north-south direction across the narrow neck of Maryland through Hagerstown, then proceeds across Pennsylvania through Chambersburg, Harrisburg, Sunbury, Wilkes-Barre, and Scranton to Binghamton, N. Y.

in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J.; (2) of asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass.; (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction; (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina; (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C.; (6) of canned goods from Baltimore, Md., to Shelby, N. C.; (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C.; and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes; that applicant is entitled to a certificate authorizing continuation of such operation; and that the application in all other respects should be denied (R. 10–11).

Proceedings in Court Below

Hearing before the court below on appellee's bill was held January 8, 1941. Appellee introduced a

copy of the testimony and the exhibits received by the Commission (R. 40). This evidence is a part of the record here (R. 40–138). April 5, 1941, the court rendered its opinion (R. 24–34), holding that the Commission's certificate should have authorized the transportation of all general commodities, without limitation, and should have authorized operations throughout all the territory in which appellee's operations had been substantial, without limitation to specific points. On the same date the court entered a final decree (R. 34) setting aside and annulling the Commission's order and remanding the cause to the Commission for further proceedings not inconsistent with the opinion.

SPECIFICATIONS OF ERRORS TO BE URGED

The District Court erred—

1. In finding as a fact, upon its own independent weighing of the evidence, that appellee, during the period on and after June 1, 1935, carried "general commodities," and in holding, upon the basis of that finding, that the Motor Carrier Act cannot reasonably be construed as permitting limitations in the certificate granted to such a carrier restricting it to the commodities carried and the points and territories served.

2. In holding that the Commission's order is invalid because it fails to grant a certificate to appellee authorizing it to transport general commodities throughout a wide territory.

3. In holding, as a separate ground of invalidity of the order, that the Commission exceeded its powers in considering the effect on regular route carriers if irregular route carriers were granted authority pursuant to the "grandfather" clause, to transport general commodities throughout a wide territory, over unspecified routes, when their right thereto has not been proved by substantial evidence.

4. In setting aside and annulling the order of the Commission.

SUMMARY OF ARGUMENT

The Commission correctly interpreted the grandfather clause as permitting certificates authorizing transportation of general commodities throughout a wide area, over irregular and unspecified routes, only when it can find from the evidence that the carrier's right thereto has been proved by a substantial showing of service rendered sufficient to establish bona fide operations. *Loving* v. *United States*, 310 U. S. 609; *McDonald* v. *Thompson*, 305 U. S. 263; *United States* v. *Maher*, 307 U. S. 148.

In this case the Commission found, upon consideration of all the evidence, that no substantial showing of service had been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the states included in appellee's application.

The court below erroneously construed the Motor Carrier Act. Its construction, which would require issuance of broad certificates to motor carriers like appellee, would to a considerable degree nullify the regulatory purposes of the Act, which sought, through its system of certificates, permits, and licenses to curb unbridled competition.

To support a grandfather application, some consistency of movement must be shown as distinguished from merely a sporadic shipment or two at remote intervals.

A mere holding out unsupported by evidence of operation consistent therewith is not enough to establish bona fide operation. The extent to which the operation is consistent with the holding out is a question of fact to be determined by the Commission upon the facts and circumstances shown in each case.

Principles enunciated by the Commission in its administration of the Motor Carrier Act, and applied in this case, have been sustained not only in *Loving* v. *United States, supra,* but in other federal court decisions and also in decisions of high state courts construing similar grandfather clauses in state statutes.

The court below erred in finding as a fact that appellee operated as a carrier of general commodities throughout a wide area, and in holding, upon the basis of such finding, that the order lim-

iting the certificate to the commodities carried and points served transcended the Commission's power. The finding of the Commission, upon its weighing of the evidence, was that no substantial showing of service had been made to establish bona fide operations in the transportation of general commodities. The court below weighed the same evidence and reached a contrary conclusion. In this it trenched upon the administrative function. *United States* v. *Maher, supra, Gray* v. *Powell*, — U. S. —, No. 18 this term, decided December 15, 1941.

In considering applications under the grandfather clause, the profitableness of the operations of the carrier and whether it will be able to continue in business, are not controlling; for the statutory dispensation is not to be enlarged by the Commission on the ground that otherwise the carrier's operations would not be profitable. An applicant for a certificate under the grandfather clause, or a carrier to whom a grandfather certificate has been granted, may at any time apply to the Commission for a certificate authorizing extension of his operations, under section 207 (a).

The court below erred in holding the order invalid on the separate ground that the Commission considered the effect upon regular-route operators from grant, upon insubstantial evidence, of certificates to irregular-route carriers. The court's holding upon this part of the case, which is to the

effect that the Commission exceeded its power in considering matters which it manifestly should consider in order to effectuate the purpose of the statute, overlooks the fundamental aims of motor carrier regulation.

ARGUMENT

I

The Commission correctly interpreted the grandfather clause as authorizing certificates for carriage of general commodities throughout a wide area, over irregular and unspecified routes, only when it can find from the evidence that the carrier's right thereto has been proved by a substantial showing of service rendered sufficient to establish bona fide operations

The decision in *Loving* v. *United States*, 310 U. S. 609.

The basic principle involved in the instant case was recently passed upon by this Court in *Loving* v. *United States*, 310 U. S. 609, which affirmed *per curiam* the decree of the specially-constituted District Court, 32 F. Supp. 464, sustaining the validity of the Commission's order in *Loving Common Carrier Application*, 12 M. C. C. 571. In that proceeding the carrier applied for a certificate authorizing transportation of general commodities between all points in five middle western states over irregular routes. The Commission found that the transportation service performed with some degree of regularity during the grandfather period consisted of seven classes of commodities principally between points in two of the states claimed. The

Commission granted a certificate authorizing this transportation, refusing to include certain other commodities infrequently carried and other points served only sporadically. Applicants urged that in determining the scope of operating authority, particular consideration should be given to the character of their holding out to serve the public as evidenced by their solicitation of various shippers, contending that since prior to the grandfather date they had offered to the public to transport general commodities between any points in the states covered by the application. The Commission pointed out that in considering numerous applications presenting like issues, it had held that an applicant must have been in actual operation on the statutory date, and that a holding out to serve is not sufficient in and of itself to establish bona fide operations as that term is used in section 206 (a), in the absence of evidence of operations consistent with such holding out. While in that proceeding the holding out may have been of the extensive character claimed, it did not view the actual transportation performed as justifying a finding that applicants were in bona fide operation in a larger territory than that in two of the states claimed.

In the District Court plaintiffs contended that the grandfather clause is to be interpreted as meaning that a certificate shall be granted to any carrier who has assumed the obligations of a com-

mon carrier and has held himself out as such, and that the certificate should authorize his continued operations as a common carrier of all commodities, and over all routes and within all territories which he assumed to serve. The court refused to follow this contention, stating that many of the questions raised had been settled by recent decisions of this Court, including *McDonald* v. *Thompson*, 305 U. S. 263, and held that the mere ability to serve, as well as the holding out to the public to carry for hire is insufficient to satisfy the statutory requirement of bona fide operation. The court said: "A mere offer to perform a service, without any actual performance thereof, on and prior to the 'grandfather' date, is not sufficient to authorize the issuance of a certificate of convenience and necessity by the Commission. An occasional service, infrequently performed prior to June 1, 1935, unless such service is seasonal, is insufficient, as there must be a bona fide operation to warrant the issuance of a certificate by the Commission without proof as to the necessity and convenience to be served by the granting of such authority." The court further held: "The purpose of the Act is regulatory, and we believe that the 'grandfather clause' was included therein for the benefit of carriers who had been in bona fide operation on and prior to the 'grandfather' date, rather than for the serving of public convenience. Adequate provision was contained in the Act for

the granting of certificates upon proper showing that there was public necessity for such service, or that a public convenience will be served. We, therefore, cannot accept such reasoning of plaintiffs for a strained construction of the Act. Too, we can imagine possible defeat of the purpose intended to be achieved by enactment of the particular Congressional Act, by the granting, under the 'grandfather clause', of numerous permits where there have been mere offers to perform service without in fact actual performance thereof." A decree was entered dismissing the bill. Upon appeal to this Court the decree, as we have seen, was affirmed in a *per curiam* decision, which cited *McDonald* v. *Thompson*, 305 U. S. 263, 266; *United States* v. *Maher*, 307 U. S. 148, 153–154; *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 547–548; *Los Angeles Switching Case*, 234 U. S. 294, 311–312.

The decision in that case, in which the facts were similar to those here, and the principle identical, would seem to be controlling in this case.

The application in this case.

Appellee's application sought a certificate authorizing interstate transportation of general commodities, with the exceptions noted, throughout the Atlantic seaboard area extending from Georgia on the south to New Hampshire on the north, each point in each of the states in this ex-

tensiye area to be a permissible point of origin and each point in each of the other states to be a permissible point of destination, with the consequent right to operate over any and all interstate routes within the area.

Commission's decision.

In the judgment of the Commission the facts established did not support this application. Appellee's headquarters were located at Cherryville, N. C., a town of about 3,000 population, where it maintained its warehouse and office (R. 71). On the grandfather date appellee's predecessor operated not more than 8 trucks (R. 7, 63), and this number had fallen to 3 or 4 when appellee acquired the business in March 1937 (R. 45, 46). The carrier has not maintained a regular route operation (R. 46, 154), has not operated its vehicles over specified routes (R. 46–47), nor maintained any regular or scheduled operations (R. 47). It has served principally an area in North Carolina within a radius of 75 miles of Cherryville, calling at particular points to pick up shipments only when requested to do so (R. 132, 140). Its principal northbound operations both before and after the grandfather date consisted of the transportation of cotton yarn from points near Cherryville to northern points. Aside from this, its only other northbound commodities moving with a degree of regularity were those forwarded by the asbestos-textile manufacturer at

Charlotte. These shipments were destined to particular points, and went as far north as Boston. In order to avoid returning southbound with empty trucks, appellee sought paying loads (R. 103, 119), and it succeeded in obtaining customers at certain particular points, for whom it carried particular commodities, such as petroleum products in drums for an oil company at Marcus Hook, Pa., and another at Sewaren, N. J., to a number of points in North Carolina and a few in South Carolina. Since its northbound operations were not on any regular schedule, its trucks moving only when there was a call from shippers (R. S. 132, 134), and the movements were to widely scattered points in the north, its trucks were not at any particular northern point at any particular time. They would happen to be at a particular place only occasionally, sometimes rarely. It had no stations, no physical facilities, no representatives at any of these northern points, nor any office except one at New York (R. 47). Hence it could hardly be said that in any real sense it served these points as a bona fide common carrier of general commodities. When consideration is given to the very great number of cities, large and small, throughout the populous industrial region embraced within the territorial limits of appellee's claimed theater of operations, and the large and diversified volume of freight, both domestic and foreign, moving constantly to and from shipping

points in that region, it would hardly seem possible that appellee, with its small carrying capacity, could have furnished a bona fide operation from and to all these points for the transportation of general commodities.

Upon consideration of all the evidence of record, the Commission found that "it is clear that no substantial showing of service has been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the States included in the application" (R. 10).

Appellee failed to prove its right to the extensive authority sought, but was entitled to authority to continue *bona fide* operations of the scope, both as respects the commodities handled and the points and territories served, which it had conducted during the grandfather period. This authority was granted. The court below conceded that appellee was not entitled to the certificate for which it applied (R. 34).

Decision of court below.

The court below, in addition to setting aside the order in this case, found also that like holdings of the Commission in similar cases were erroneous (R. 28), and thus reversed the underlying principle which has governed the disposition of many applications of this kind.[1] The court held that it

[1] During the 120-day period specified in section 206 of the Act, 80,925 grandfather applications were filed with the Commission. Ann. Rep., I. C. C., 1936, p. 88.

is unreasonable to limit the certificate of one who has functioned as a general carrier to the specific commodities carried and the specific points served;* that the law cannot reasonably be construed as authorizing such limitation (R. 33); that the Commission should pass upon the application in the light of the principles laid down by the court, and without the limitations which the court condemned, and grant to appellee a certificate covering the territory in which it finds that appellee carried on substantial operations as a common carrier during the grandfather period (R. 34).

Effect of court's decision

The court's opinion seems to be clear in directing that the Commission shall issue a certificate covering general commodities, apparently both northbound and southbound. Under the opinion the certificate must in no instance limit the scope of operations to particular points but must authorize operations to and from all points within "*the territory* in which it finds that appellee carried on substantial operations * * *." [Italics ours.] The certificate directed by the court would apparently authorize appellee, now or at any time

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*As shown by its report, the Commission did not in all instances limit the carrier to the specific points served, and, where the transportation was from or to a sufficiently large number of points in a territory, the Commission included the territory in the certificate, thus authorizing transportation from all points or to all points therein.

in the future,* to function as a carrier of general commodities from Boston, New York, Philadelphia, Baltimore, Jersey City, Newark, Harrisburg, Reading, Wilkes-Barre, Scranton, and numerous other cities, large and small, throughout the populous industrial area of the northeast, and since the certificate may not be limited to specific points, it would necessarily include at least some *territory* adjacent to these places or, possibly, blanket in the entire northeastern territory.

The effect of the decision seems clearly to be that the carriers such as appellee, operating wholly or partly as "anywhere for hire" carriers, over irregular and unspecified routes, on a "call on demand" basis only, in a wide territory, must be given a certificate permitting them to solicit and carry any and all commodities (with only a few exceptions) between all points throughout the territory, provided only that they have done some substantial business, perhaps even in only one commodity, between certain points in the ter-

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* The certificates issued by the Commission are permanent, being subject to revocation only for wilful failure to comply with statutory provisions or regulations of the Commission, under section 212. Moreover, being salable and transferable under section 212 (b) and section 5, Interstate Commerce Act, as amended, they have in themselves a money value. *Union Bus Lines, Inc.—Purchase—Amberson*, 5 M. C. C. 201, 205; *Yellow Truck Lines, Inc.—Purchase—F & H Truck Lines*, 35 M. C. C. 773, 777.

ritory, the certificate to be unlimited as to commodities and as to specific points.[10]

We think that the court's construction of the Motor Carrier Act is erroneous, and that it would in an important respect and to a considerable degree nullify the regulatory purpose of the Act.[11]

Interpretation of grandfather clause

The Act requires, as a condition to the grant of a certificate under the grandfather clause, that there shall be a showing, and a finding by the Commission, of *bona fide operation* by the carrier on and after June 1, 1935. Section 208 (a) requires that any certificate issued "shall specify the service to be rendered," in addition to the routes, points, and territory to be served. Under these provisions the Commission must determine not merely whether the carrier was in actual operation during the statutory period, but also what service the carrier has performed during that period—what class or classes of commodities it carried and what points and territories it served. It must determine the nature and extent of its bona

[10] "Many operators, particularly common carriers, have regular routes, but many more do not, *and there are thousands who go anywhere for hire, at least within a specified territory.* * * *"—Fourth Report, Federal Coordinator of Transportation (House Doc. 394, 74 Cong., 2d Sess., Jan. 21, 1936, pp. 26–27). [Italics ours.]

[11] "The system of certificates, permits, and licenses is of basic importance in the scheme of regulation * * *." (Annual Report, I. C. C., 1936, p. 71.)

fide operations. It acts in this regard only upon application filed; obviously, it must determine whether the bona fide operations are as extensive, both with respect to commodities and points or territories, as claimed in the application.

With respect to commodities, it is to be observed that, generally speaking, motor carriers, unlike the railroads, have not been carriers of general freight.[12] In a great many instances they have carried only one, or a few comodities, frequently only "high class" freight,[13] although many of them claimed they were willing to take any freight offered. The existence of many carriers of this type was well known; this is reflected by the definition of "common carrier" in the Motor Carrier

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[12] In the fourth Report of the Federal Coordinator of Transportation (House Doc. 394, 74 Cong., 2d Sess., Jan. 21, 1936), at pp. 26–27, it was stated:

> * * * property carriers * * * are of many kinds and descriptions. Some are common carriers, but many of these confine their operations to *special commodities*. * * *
>
> In general, they are small enterprises. A great number are individuals operating only a single truck. * * * Nobody yet knows how many motor carriers will be subject to the jurisdiction of the Commission, but there seems reason to believe that the number of common and contract carriers and brokers will be upwards of 100,000 and perhaps as high as 200,000. [Italics ours.]

[13] See second Coordinator report, Senate Doc. No. 152, 73d Cong., 2d Sess. (1934), pp. 15 ff., 23–24, 33, and reference to trucks taking the "cream of the traffic" from the railroads, p. 16.

Act, section 203 (a) (14), as including carriers of property "or any class or classes of property."

The grandfather clause is to be interpreted in the light of the Act as a whole and of the public purposes it was intended to accomplish. These were expressly declared in section 202 (*infra*, p. 52). Among the ills sought to be alleviated, as stated by the report in this case, were congestion of highways, destructive rate practices, and unbridled competition. This Court held, in *McDonald* v. *Thompson*, 305 U. S. 263, 266: "As the Act is remedial and to be construed liberally, the proviso defining exemptions is to be read in harmony with the purpose of the measure and held to extend only to carriers plainly within its terms."[14]

Principles enunciated by Commission in similar cases.

As shown by the Commission's reports in cases heard,[15] a great many grandfather applications were filed by small concerns operating only one or a few trucks, in the transportation of certain particular commodities, although many of them claimed they held themselves out to transport gen-

[14] Citing *Piedmont & Nor. Ry.* v. *Comm'n*, 286 U. S. 299, 311, in which the Court said: "The Transportation Act was remedial legislation and should therefore be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended."

[15] The statute does not require a hearing; a large number of applications were disposed of through informal investigation and conferences. Usually, hearings have been held only where protests were filed.

eral commodities. In some instances the operation was between specific points or "fixed termini" over regular routes; in many others, the operation was of the "anywhere for hire" character, usually within a defined territory and frequently with a more or less definite starting point or territory. Many of such carriers, like appellee, had incidentally and sporadically transported several commodities other than their "specialties" and the question arose whether their certificates should cover all commodities or only those carried with some degree of regularity. In passing upon such applications, the Commission has consistently taken the view that the application should be granted only when the carrier's right thereto has been proved by substantial evidence. Because of the difficulty, if not the impossibility, of laying down any comprehensive rule as to the showing required to establish a bona fide operation within the meaning of the Act, it expressed the view, in *System Arizona Exp. Service Application,* 4 M. C. C. 129, 133, that it seems clear "that some consistency of movement must be shown as distinguished from merely a sporadic shipment or two at remote intervals. Beginning with the statutory date, and continuously thereafter, there should be shown some consistency of service, either a regular service or an irregular service of such consistency and continuity as to be undoubted. The frequency and volume required to be shown would

depend on what would reasonably be expected of an operator endeavoring to give a good-faith service to a particular place, or over a particular route, having in mind the size, location, and accessibility of the place and the quality of the route."

This test was applied in *Merchants, etc., Application,* 21 M. C. C. 93, a case similar in all general respects to the present one, and the Commission found that although applicant requested authority to transport general commodities, the evidence did not justify the granting of such authority except perhaps with respect to operations between Terre Haute and Chicago; that no substantial evidence had been presented to prove the carrier's right to authority to transport general commodities throughout a wide territory, over irregular and unspecified routes, pursuant to the "grandfather" clause. With respect to that applicant's operations between Chicago and Terre Haute, the Commission said, "the term 'general commodities' is entirely too comprehensive to be used in connection with any authority herein granted, especially when one considers the size, location, and accessibility of the various large cities within the territory involved. Accordingly, the record warrants the conclusion that applicant has been engaged in transportation, in interstate or foreign commerce, only of those commodities which are set forth in appendix B attached" (*Ibid.,* 103).

Other cases involving the same principle, and in which the Commission has reached the same conclusion, are: *Powell Application,* 9 M. C. C. 785, 791–792; *Loving Common Carrier Application,* 12 M. C. C. 571; *Eastern Carrier Corp. Common Carrier Application,* 14 M. C. C. 430; *Langer Application,* 23 M. C. C. 302, 305; *Lett Application,* 26 M. C. C. 159, 165.

Effect of "holding out".

The contention has been made by many applicants, as in the present case, that they were entitled to certificates covering general commodities throughout a broad territory on the ground that they have held themselves out to conduct such transportation. It is the view of the Commission that a mere holding out without evidence of operation consistent therewith is not enough to establish bona fide operation. As stated in an early case, *Crescent etc. Application,* 2 M. C. C. 313, any certificate or permit issued pursuant to the grandfather provisions of sections 206 (a) or 209 (a) "must necessarily be predicated upon the motor-carrier operations engaged in by applicants on the respective statutory dates and continuously since that time, and a mere holding out, or offer to operate, on the specified dates, is not the equivalent of bona fide operation, as that term is used in those sections. The burden of proof is upon applicants to establish the character and scope of their operations." As observed by the

Commission, however, in *Reliance Truck Co. Application,* 4 M. C. C. 594, the word "operation" is not to be too narrowly construed, and in that connection the holding out of the carrier must be taken into consideration. "For example, in the case of a common carrier of household goods or of oil-field supplies serving a large territory over irregular routes, we grant certificates under the 'grandfather' clause permitting operation to many points to which no freight has actually been hauled. Nor do we require proof, in granting 'grandfather' certificates to haul 'general commodities,' that each and every commodity within that description has actually been carried. The question is whether there has been operation within the 'grandfather' period consistent with the holding out in the natural and normal course of business."

In *Eucalyptus Wood Co. Application,* 16 M. C. C. 468, the applicant sought a certificate covering operations from Los Angeles, Calif., to an area centering about Silverpeak, Nev. The Commission, after observing that the Silverpeak area is devoid of industrial or commercial enterprises of any consequence except mining, and catering to the needs of those engaged in that industry, and that the mining operations were largely affected by market conditions and tended to shift from one point to another, stated that the situation appeared to be substantially similar to that

presented in the servicing of oil fields or in the moving of household goods; that these operations within a sizable territory are necessarily irregular as to points served and frequency of service. "For these reasons and because of the specialized nature of the service, we have consistently held that not only the services actually performed during the 'grandfather' period but also the holding out to serve any point within the territorial scope of the applicants' operations must be considered. * * * The controlling fact in such cases is whether there has been substantial operation within the 'grandfather' period consistent with the holding out in the natural and normal course of business." See *Jones Application*, 19 M. C. C. 687, 692; *Howard Hall etc. Application*, 24 M. C. C. 273, 274;[16] *Aero etc. Application*, 20 M. C. C. 633; *Fleming Common Carrier Application*, 8 M. C. C. 469;[17] compare *Merchants etc. Application, supra*, where, in passing upon a "grandfather" application for a general commodity certificate between points in Illinois, Indiana, Ohio, Pennsylvania, New York, etc., the Commission considered the size, location, and accessibility of the various large cities within the territory.

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[16] The order in that case was sustained by the District Court, *Howard Hall Co.* v. *United States*, 38 F. Supp. 556. Appeal has been taken to this Court, No. 210, this Term; it is set for argument immediately following this case.

[17] The validity of the certificate issued in the *Fleming* case is before this Court in No. 110, *Alton R. Co.* v. *U. S. et al.*

Present case decided by Commission in accordance with established principles.

These principles were followed by the Commission in deciding the case at bar. The findings in the report, together with the supporting evidence, show that appellee was principally engaged during the grandfather period in the transportation of cotton yarn from points in North Carolina within 75 miles of Cherryville to certain northern points (R. 8, 9). While most of these shipments moved principally from 10 points, the Commission found that applicant had held itself out to transport this commodity from all points in a territory in North Carolina east of Asheville comprising 12 counties, and actually conducted an operation consistent with such holding out. Accordingly, the certificate was not restricted to the specific points from which applicant had transported shipments, but included all points within the 12 counties. In other instances also the evidence of operation was deemed sufficient to warrant inclusion in the certificate of territories. This is true as to a destination territory comprising the five boroughs of New York City and the adjoining territory of eight counties in New Jersey, and the territory in Pennsylvania on and east of U. S. Highway 11, for northbound cotton-yarn traffic. The certificate also includes the entire state of North Carolina as destination territory for southbound traffic in petroleum products shipped from Sewaren, N. J., and Marcus Hook, Pa., in lino-

leum from several points of origin, and in roofing and screen wire shipped from York, Pa.

But it was the Commission's conclusion that the evidence was not sufficiently substantial to prove operations consistent with a holding out to transport general commodities throughout the wide territory claimed.[18] This conclusion is expressed in the report as follows:

> On the basis of all the evidence, it is clear that no substantial showing of service has

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[18] It may be noted that the evidence of holding out in this case is very meagre. There is no evidence of a holding out to transport general commodities in the form of a published tariff distributed to shippers, or of advertising, or of solicitation except locally in North Carolina through a firm of freight brokers. (Compare *Dixie, etc., Application*, 17 M. C. C. 735, 741.) There was evidence that when one of appellee's trucks was about to start with a north-bound load, a telegram was sent to a northern shipper seeking a return load south-bound (R. 119).

It was admitted that shipments were not solicited for points north of New York City (R. 62). If, however, shipments to that territory were offered, appellee would take them. But such shipments were rare except in the case of asbestos textile products forwarded by the Charlotte manufacturer. These shipments were taken with some degree of regularity to New York City, to certain Pennsylvania and New Jersey cities and to certain points north of New York City, viz, Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass. Authority to continue this service was included in the certificate. However, this brief assumes *arguendo* that there was in fact a holding out to transport general commodities from and to all points in the wide territory claimed by appellee. The Commission deemed the fact immaterial, finding to the effect that even if there were such a holding out, the evidence was not sufficiently substantial to prove operations consistent therewith.

been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the States included in the application" (R. 10).

Principles sustained by Federal and State courts and by this Court.

We have hereinabove reviewed the decisions in *Loving* v. *United States*, 310 U. S. 609, 32 F. Supp. 464, sustaining the Commission's order in a case decided in accordance with the principles explained above, and found to be controlling in the present case.

In *Eastern Carrier Corp.* v. *United States*, 31 F. Supp. 232, sustaining 14 M. C. C. 430, *supra*, it was contended that plaintiff had shown such bona fide interstate transportation of general commodities as would entitle it to a grandfather certificate. The Commission found that plaintiff had transported other commodities than those covered by the certificate issued but that such operations had been more or less sporadic and not continuous since June 30, 1935. The court entertained "no doubt that the Commission under the Act has the power to restrict the plaintiff to the type of service it was performing on June 1, 1935, not only as to the routes operated but also as to the class of commodities which it carried"; and that "while the Act does not confer such power in express terms we think that the existence of such a power is implicit in its provisions." The Court said further:

In *United States* v. *Maher, supra,* the Supreme Court stated * * * by Mr. Justice Frankfurter, "The recognized practices of an industry give life to the dead words of a statute dealing with it." By the enactment of the Motor Carrier Act Congress intended to regulate the motor-carrier industry. Those who drafted the Act were well aware that carriers by motor vehicle were specializing in the transportation of particular commodities. It was obviously the intention of Congress by the enactment of the grandfather clause to preserve to the carrier its right to transport commodities or articles in commerce of the kind which it was transporting on June 1, 1935.[19]

* * * the transportation of general merchandise by the plaintiff and its predecessor was sporadic and entirely incidental to its chief business, which was that of

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[19] See Hearings on H. R. 5262 and H. R. 6016, 74th Cong., 1st Sess., 1935. The Commission conducted two comprehensive investigations (see *Motor Bus and Motor Truck Operation*, 140 I. C. C. 685 (1928); *Coordination of Motor Transportation*, 182 I. C. C. 263 (1932), see also 1932 Annual Report, I. C. C., pp. 18–23). The subject was intensively studied by the Federal Coordinator of Transportation who recommended legislation for the regulation of motor carriers. See Fourth Report of the Federal Coordinator of Transportation on Transportation Legislation, January 21, 1936, House Doc. 394, 74 Cong., 2d Sess., pp. 26–27. The Coordinator's second report Regulation of Transportation Agencies, March 10, 1934, Senate Doc. 152, 73 Cong., 2d Sess., deals comprehensively with motor carriers.

transporting silk, rayon hosiery, and commodities for mills processing or manufacturing such commodities.

In *Gulf, M. & O. R. Co.* v. *Luter Motor Express,* 1 So. (2) 231, the Supreme Court of Mississippi set aside a certificate issued by the Mississippi Commission which granted an application for a certificate to operate as a common carrier by motor vehicle of commodities generally over regular routes and between fixed termini. The application was based solely upon a grandfather clause in the State statute similar to that in the Federal Motor Carrier Act. The court held: "* * * One who was operating on the date aforesaid as a restricted carrier cannot avail of the grandfather proviso to obtain a certificate of convenience and necessity as a general common carrier. Here the record shows that what appellee had carried had been fresh cream, oil, and other petroleum products, and that such other things as were carried were merely casual, and were of comparatively rare occurrence. These sporadic or occasional incidents cannot be enlarged into the creation of a right to be certified, under the grandfather clause, as a common carrier of everything which may be transported by motor vehicle, as the order of the Commission attempted to do in this case."

Upon the question of holding out, the court said: "Nor does the fact that the carrier held himself out as ready, able, and willing to carry

any and everything for any and everybody change the legal situation so far as the grandfather proviso is concerned. What was actually and ordinarily done on and before the date mentioned is the test, and the burden of proof in such matters rests on the applicant; and, as already stated, that proof must be definite and well sustained, whence it follows that statements by a witness or witnesses which are phrased in terms of generalities are not sufficient."

Finally it observed that "the principles of procedure and adjudication outlined herein will be found in accord with what has been said" in numerous decisions of the Interstate Commerce Commission and of the Federal courts, which it cited, including the *Eastern Carrier Corp.* case, the *Loving* case, and the *Maher* case, *supra.* See also *Santini Bros.* v. *Maltbie,* 23 N. Y. Supp. (2d) 566; *Whinney* v. *Public Serv. Comm.,* 176 A. 753.

II

The court below erred in finding as a fact that appellee operated as a carrier of general commodities throughout a wide territory, and in holding, upon the basis of such finding, that the order limiting the certificate to the commodities carried and points served transcended the Commission's power

The court below agreed that a mere holding out by a common carrier is not enough to bring him within the protection of the grandfather clause, since the statute provides that he must have been

in bona fide operation as a common carrier within the territory; and this bona fide operation means, in the court's judgment, that he must have done such a substantial volume of business within the territory that he could reasonably be said to be operating therein as a common carrier. Nevertheless, the court held appellee to be a carrier of general freight, that it was willing to haul any freight that it was offered, outside of the specialties requiring specialized equipment, and did substantial business of this character, and that, being a common carrier of general freight during the grandfather period, it became entitled to a certificate on the same basis (R. 30–31).

Thus, while apparently agreeing with the Commission in principle, the court gives a different weight to the evidence and holds, contrary to the Commission's finding, that the business done was sufficiently substantial to require issuance of a certificate to appellee as a carrier of general freight.

Authority to transport general commodities throughout a wide territory, over irregular and unspecified routes, pursuant to the grandfather clauses of the Act, should be granted to a carrier, in the judgment of the Commission, only when such carrier's right thereto has been proved by substantial evidence. It is not necessary that the evidence show that the carrier has transported all general commodities and has served each and

every point in the territory, but the evidence must make a showing of service sufficiently substantial in the judgment of the Commission to establish that the carrier did conduct bona fide irregular-route operations in the transportation of general commodities in the territory. In the judgment of the Commission the evidence here was not sufficiently substantial. Its finding was,

> On the basis of all the evidence, it is clear that no substantial showing of service has been made to establish bona fide irregular-route operations in the transportation of general commodities from and to all points in the States included in the application (R. 10).

The court below weighed the evidence and reached a contrary conclusion.

In this we think it trenched upon the administrative function. In *United States* v. *Maher, supra,* this Court said:

> By this legislation Congress responded to the felt need for regulating interstate motor transportation through familiar administrative devices, while at the same time it satisfied the dictates of fairness by affording sanction to enterprises theretofore established. Whether an applicant seeking exemption had in fact been in operation within the immunizing period of the statute was bound to raise controverted matters of fact. *Their determination Congress entrusted to the Commission.* [Italics ours.]

See also the decision of this Court in No. 18, *Gray* v. *Powell*, rendered December 15, 1941.

The court below in its opinion characterized the Commission's decision in this case as "quite without precedent," but, as shown above, the principles on which it rests have been followed by the Commission in deciding numerous similar cases, by State Commissions administering local laws for the regulation of motor carriers which contain similar grandfather clauses, and these decisions have been sustained by the State courts, by the federal district courts, and by this Court.

The court below, after stating the contention of plaintiff that the limitations of the order are unreasonable and not authorized by law, expressed the view that "they amount to a *reductio ad absurdum* of the position taken by the Commission in this and a number of other cases to the effect that classification justifies limitation of 'grandfather' certificates to specific commodities shown to have been transported between specific points." It is not our understanding that this is the holding of the Commission. It has pointed out that common carriers handling a class or classes of property are subject to the Motor Carrier Act, under section 203 (a) (14). Certificates under the grandfather clause in cases of this kind are issued in accordance with the principles above explained, and it is of little moment as to how the carriers would be classed under the class-

ification adopted by the Commission, 2 M. C. C. 703. It may be noted, however, that one of the 17 classes there described would apparently fit appellee, namely, Class 17, "Carriers of specific commodities not subgrouped," in reference to which the Commission explained that "Throughout the country there are individual truck operators who engage in the transportation of some specific commodity or commodities which do not fall within any of the commodity subgroups included in this classification." But this classification is not controlling in the determination of grandfather rights. The court below, upon its own weighing of the evidence, reached the conclusion, contrary to the Commission's that appellee is a carrier of general commodities, and in support of its view it gave considerable weight to the Commission's classification, as indicated by its opinion, whereas the Commission, in its report, did not refer to it, and apparently deemed it of no weight in determining appellee's application.

The court referred to and quoted from the brief of the *amicus curiae,* which criticized the certificate granted, on the ground that under it "applicant would be permitted to transport cotton yarn to many destinations and territory to which it would be denied the right to transport on the same trip asbestos textile products, and correspondingly would be permitted to handle asbestos textile

products to Boston and Hudson, Mass., although on the same trip it would not be permitted to haul cotton yarn." This criticism fails to give effect to the evidence, which shows that the asbestos textile products were transported by appellee in full truckload quantities (R. 82) from Charlotte only (R. 75) to particular destinations in the North where factories were located which used these materials (R. 82–84). The evidence shows that they were shipped to Philadelphia and North Wales, Pa., but does not show that they were shipped to any other point in eastern Pennsylvania, or that the Charlotte manufacturer had occasion to ship them to other points in that territory (R. 77). Although appellee did not solicit business north of New York, it would take these shipments for the Charlotte manufacturer to Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass. This was remunerative traffic, and appellee was willing to transport it to these New England points despite the fact that it did not hold itself out to carry to that territory and did not solicit general traffic for movement beyond New York (R. 10). Concerning the statement quoted in the court's opinion that appellee transported ten shipments of cotton yarn to points in Massachusetts prior to the "grandfather" date, it is true the report so finds, but Exhibits 1 and 4 show no shipment of this commodity to any Massachusetts point since June 1, 1935. For this rea-

son the certificate did not cover cotton yarn to Massachusetts. The certificate in this and other respects referred to by the *amicus curiae* reflects appellee's irregular operations.

The opinion of the court below, referring to appellee's contention "that the effect of thus limiting the order will be to put it out of business," stated "it is manifest that this must be true since it is hardly conceivable that a truck company could do business if allowed to carry loads in only one direction, and the limitations imposed by the order will render it practically impossible for the trucks of plaintiff to obtain freight when returning south." But the evidence does not show that appellee's trucks were always able to get a return load. Nor is there evidence from which a conclusion could be reached that appellee would be unable to operate profitably without return loads. The evidence indicates, as previously shown, that appellee's trucks were able to obtain with a degree of regularity return loads from particular shippers at particular northern points, for example, from oil companies at Sewaren, N. J., and Marcus Hook, Pa. This transportation is authorized by the certificate. Whether appellee's business will be unprofitable under the certificate issued is speculative, since there is no evidence from which a conclusion on this question could be reached. In considering applications under the grandfather clause, the profitableness of the operations of the carrier

and whether it will be able to continue in business, are not controlling. For the statutory dispensation is not to be enlarged by the Commission on the ground that otherwise the carrier's operations would not be profitable. See *Texas & Pac. Ry.* v. *Gulf etc. Ry.*, 270 U. S. 266, 277; *U. S.* v. *Ill. Cent. R. R.*, 263 U. S. 515, 525. Cf. *Motor Bus and Motor Truck Operation*, 140 I. C. C. 685, 736–738. An applicant for a certificate under the grandfather clause, or a carrier to whom a grandfather certificate has been granted, may at any time apply to the Commission for a certificate authorizing extension of his operations, under section 207 (a).[20]

As indicating that, in its opinion, appellee was a carrier of general commodities, the court lists a number of commodities which it found from an examination of the record were transported by appellee prior to June 1, 1935. But the list includes commodities carried only occasionally or incidentally, with long intervening periods, or in isolated instances, and several which the appellee carried only once in a 5-year period. This is true as to screen cloth, electrical supplies, plumbing supplies, and Brazil nuts. Appellee has carried only two shipments of bedspreads; only two shipments of paper. For a certain period it carried tires for a tire company at Charlotte but that

[20] A very large number of such cases appear in the Commission's motor carrier reports. One is *Karn's Transfer, Inc., Extension—Virginia*, 21 M. C. C. 29.

company closed its plant in September 1935 (R. 43–45), and the record contains no evidence that appellee has carried tires since then. Many of the commodities mentioned by the court are included in the certificate, namely, cotton yarn and warps, beams, cones and skeins of cotton yarn, petroleum products, canned goods, linoleum rugs, roofing, asbestos products, beer, spools, empty barrels, and boxes. In view of the infinite variety of articles of commerce susceptible of transportation in ordinary trucks (of which there are literally several thousand), the Commission could reasonably find upon the evidence showing the relatively small number of commodities handled by appellee, that it was not, in fact, a carrier of general commodities.

In reaching a conclusion upon the evidence as to whether appellee was in bona fide operation as a carrier of general commodities, it was permissible for the Commission to take into consideration the small number of trucks in operation by appellee, the fact as indicated by appellee's own evidence that most of its business consisted of cotton yarn and asbestos textile products for particular mills, that these commodities were shipped for long distances, requiring appellee's trucks to be on the roads for considerable periods of time, leaving little capacity for appellee to handle other business except incidentally and to a small extent.

III

The court below erred in holding the order invalid on the separate ground that the Commission considered the effect upon regular-route carriers from grant, upon insubstantial evidence, of certificates to irregular route carriers

The court found, as a separate ground of invalidity of the order, that the limitation which it imposes with respect to irregular-route carriers is not imposed with respect to carriers on regular routes and is admittedly imposed by it for the protection of regular-route carriers. The court said:

> * * * The Commission so states in the portion of its opinion quoted above, wherein the Commission said: "Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service." But Congress has made no such distinction between common carriers by regular and those by irregular routes; and, for the Commission to make such distinction is to add to the act of Congress in favor of one class of carriers and against another. This the Commission cannot do (R. 33).

But the Commission's reports show that the same criterion is applied to both regular and

irregular-route carriers. This is illustrated by *Jones Contract Carrier Application,* 19 M. C. C. 687, in which the Commission granted a certificate to operate as a common carrier of one commodity from San Antonio, Tex., to Los Angeles, Calif., and of six commodities in the opposite direction between the same points, over a regular route. The application sought a certificate covering general commodities; and applicant contended that all kinds and classes of commodities were at all times solicited and hauled to the extent they were obtained. The Commission found that applicant was not hauling general commodities but principally one commodity westward and six eastward. It held that "In order to be entitled to 'grandfather' rights with respect to the hauling of general commodities, there should be some greater showing than has been made herein that a diversified class of commodities was actually being handled consistent with any holding out in that respect on and prior to the statutory date."

Further, we think the court's holding takes too circumscribed a view of the purpose of the Motor Carrier Act. As pointed out by Chairman Eastman, concurring in *Keystone Transp. Co. etc.,* 19 M. C. C. 475, 491:

> The common carrier is required to serve the general public within the limits of its facilities * * *. The more important common carriers operate largely over regular routes and between fixed termini.

> Generally they are forced by the diversity of their customers to operate on regular schedules, carrying large and small shipments between many points, and to maintain terminals and freight-solicitation facilities. When so doing, their operating costs tend to rise, requiring the maintenance of rates and charges sufficient to permit a profitable operation as a whole.

If authority were granted to a carrier, pursuant to the grandfather clause, to operate over irregular and unspecified routes for the transportation of general commodities throughout a wide territory, without proof by substantial evidence of their right thereto, such carriers would thereby obtain official sanction to invade the regular routes to obtain the cream of the traffic available thereon in so-called irregular-route service. Such action would contravene the purpose of Congress—

> 'to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices;' and 'develop and preserve a highway transportation system properly adapted to the needs

> of the commerce of the United States and of the national defense.' (Sec. 202, Motor Carrier Act.)[21]

As further stated by Chairman Eastman in the *Keystone* case, *supra*:

> This declaration of policy is a succinct statement of the ultimate purpose which Congress desired to accomplish through the act, and it reflects the evils which then existed and which Congress sought to remedy. The transportation industry was plainly in an unsound economic condition; competition was running wild, unjust discriminations abounded, facilities were being multiplied without plan and in disregard of public need, and both carriers and shippers were suffering. The Motor Carrier Act was part of a plan to bring these conditions under rational control, and it aimed to achieve good order in the motor-carrier industry and stabilize and strengthen it for the public good. The whole act and all of its provisions are to be read in the light of the declaration of policy which set forth these ends (P. 497).

The court's holding on this part of the case, which is to the effect that the Commission exceeded its power in considering matters which it

---

[21] A general declaration of "National Transportation Policy," *infra*, p. 57, applicable to rail, motor, and water carriers, was made in Transportation Act, 1940, superseding the declaration of policy in section 202, Motor Carrier Act, 1935.

manifestly should consider in order to effectuate the purpose of the statute, seems to overlook the fundamental aims of motor-carrier regulation.

CONCLUSION

It is respectfully submitted, for the reasons above stated, that the decree of the District Court should be reversed.

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DECEMBER 1941.

APPENDIX

Statutes involved

The pertinent provisions of the Motor Carrier Act, 1935, applicable at the date of the Commission's order, July 10, 1940 (c. 498, 49 Stat. 543; c. 811, 52 Stat. 1236), are as follows:

SEC. 202. [U. S. Code, Sup. V, title 49, sec. 302.] (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportaion by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

SEC. 203. [U. S. Code, Sup. V, title 49, sec. 303.] (a) As used in this part—

* * * * *

(14) The term "common carrier by motor vehicle" means any person who or which

undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor-vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of part I.

SEC. 206. [U. S. Code, Sup. V, title 49, sec. 306.] (a) Except as otherwise provided in this section and section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity

will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further,* That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by

regulation, require. Any person, not included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission.

SEC. 207. [U. S. Code, Sup. V, title 49, sec. 307.] (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) No certificate issued under this part shall confer any proprietary or property rights in the use of the public highways.

SEC. 208. [U. S. Code, Sup. V, title 49, sec. 308.] (a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

SEC. 210. [U. S. Code, Sup. V, title 49, sec. 310.] No person, after January 1, 1936, shall at the same time hold under this part a certificate as a common carrier and a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory, unless for good cause shown the Commission shall find that

such certificate and permit may be held consistently with the public interest and with the policy declared in section 202 (a) of this part.

SEC. 210a. [U. S. Code, Sup. V, title 49, Sec. 310a.] (a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify but for not more than an aggregate of one hundred and eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

The "National Transportation Policy," declared by Congress in Transportation Act, 1940 (54 Stat. 898, 899), and incorporated as a preface to the Interstate Commerce Act, reads as follows:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation serv-

ices, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 197.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAROLINA FREIGHT CARRIERS CORPORATION, *Appellee*.

Appeal from the District Court of the United States for the Western District of North Carolina.

BRIEF IN BEHALF OF CAROLINA FREIGHT CARRIERS CORPORATION.

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INDEX

	Page
Opinion of the Court Below	1
Jurisdiction of This Court	1
Statement of the Case	2
Questions Presented	8
Argument	10
Plan of Brief	10
The Commission Erred as a Matter of Law in the Construction which It Placed upon the Definition of "Common Carrier by Motor Vehicle"	11
The Commission Erred as a Matter of Law in Failing to Consider Facts and Circumstances of Record	22
The Commission Erred as a Matter of Law in Basing Its Decision on Considerations which Have No Relevancy	28
The Loving Case Furnishes No Precedent	32
The Eastern Carrier Corporation Case Turned on the Lack of Evidence Before the Court	34
The McDonald Case is not in Point	35
The Lower Court did not Substitute Its Judgment for that of the Commission on the Weight of the Evidence	37
Conclusion	38
Certificate of Service	39
Appendix	40

TABLE OF CASES

Page

Alton Railroad Company v. United States, No. 110, this Term 8, 17
Baltimore & O. R. Co. v. United States, 277 U. S. 291.. 38
Bennett v. Dutton, 10 N. H. 481..... 12
Classification of Motor Carriers of Property, 2 M. C. C. 703 21
Dickson v. Great Northern Ry. Co., 18 Q. B. Div. 176.. 12
Dwight v. Brewster, 1 Pick. (Mass.) 50..... 11
Eastern Carrier Corp. Common Carrier Application, 14 M. C. C. 430..... 34
Eastern Carrier Corp. v. United States, 31 Fed. Supp. 232 34
Eucalyptus Wood Co. Common Carrier Application, 16 M. C. C. 488..... 23
Farmers' & Mechanics' Bank v. Transp. Co., 23 Vt. 186 12
Fish v. Chapman, 2 Ga. 349..... 11
Fleming Common Carrier Application, 8 M. C. C. 469.. 8
Fuller v. Bradley, 25 Penn. St. 120..... 12
Hale v. Navigation Co., 15 Conn. 539..... 11
Honeyman v. Oregon & California R. R. Co., 13 Oreg. 352 12
Interstate Commerce Commission v. Alabama Midland Ry. Co., 168 U. S. 144..... 22
Interstate Commerce Commission v. Northern P. Ry. Co., 216 U. S. 538..... 22
Interstate Commerce Commission v. Oregon-Wash. R. & Nav. Co., 288 U. S. 14..... 38
Kimball v. R. Co., 26 Vt. 248..... 12
Loving Common Carrier Application, 12 M. C. C. 571.. 32
Loving v. United States, 32 Fed. Supp. 464, affirmed per curiam, 310 U. S. 609..... 32
McDonald v. Thompson, 305 U. S. 263..... 2, 35
New England Motor Carrier Rates, 27 M. C. C. 1..... 30
New York C. R. Co. v. Lockwood, 17 Wall. 357..... 12
Ocean S. S. Co. of Savannah v. Supply Co., 131 Ga. 831 11
Pomeroy v. Donaldson, 5 Mo. 36..... 11
St. Joseph Stock Yards Co. v. United States, 298 U. S. 38 30
St. Louis & O'Fallon Ry. Co. v. United States, 279 U. S. 461 13
Schouler on Bailments including Carriers..... 11, 12
Sheldon v. Robinson, 7 N. H. 157..... 11

Page

Slagle Contract Carrier Application, 2 M. C. C. 127 2, 14, 15, 16
Steele v. McTyer, 31 Ala. 667 12
Texas & P. Ry. Co. v. Interstate Commerce Commission, 162 U. S. 197 ..... 13, 22
Tunnel & Short v. Pettijohn, 2 Harr. (Del.) 48 12
United States v. Maher, 307 U. S. 148 ..... 14, 23
United States v. Pennsylvania R. Co., 242 U. S. 208 38

STATUTES CITED

Interstate Commerce Act, Part I:

Section 1 12

Motor Carrier Act, 1935:

Section 202(a) 31
Section 203(a)(14) 10, 11, 12, 17, 20
Section 204(c) 21
Section 206(a) 2, 13, 22, 37
Section 208(a) 30
Section 209(a) 11
Section 210 2
Section 216 ..... 30, 31, 40

Act of September 18, 1940, c. 722, 54 Stat. 920:

Section 18(a) 10

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Appeal from the District Court of the United States for the Western District of North Carolina.

BRIEF IN BEHALF OF CAROLINA FREIGHT CARRIERS CORPORATION.

OPINION OF THE COURT BELOW.

The opinion of the District Court of the United States for the Western District of North Carolina (R. 25-34) is reported in 38 Fed. Supp. 549, and the report of the Interstate Commerce Commission (R. 6-11), hereinafter called the Commission, is found in 24 M. C. C. 305.

JURISDICTION OF THIS COURT.

In its brief herein the Commission has correctly set forth the grounds on which the jurisdiction of this Court is invoked, and, in the interest of brevity, we shall not repeat them here.

STATEMENT OF THE CASE.

At pages 2 to 4 and 4 to 12 of its brief herein the Commission has set forth what it assumes to be the "questions presented" and the facts. Although its resumé of the facts is in large part correct, the whole is fashioned in such manner, particularly by what it omits, that we are apprehensive that at the very outset an incorrect impression may be left with this Court. We deem it no more than prudent, therefore, to place at the disposal of the Court what we believe to be a more complete and more illuminating statement of the facts here to be considered and our view of the questions presented. This we shall do in the briefest possible compass.

This proceeding grows out of an application seasonably filed with the Commission by appellee's predecessor, the Mauney Transfer Company, Inc.,[1] under the so-called "grandfather" clause[2] of section 206(a) of the Motor Carrier Act, 1935 [U. S. Code, Sup. I, title 49, sec. 306], hereinafter usually called the act. The application was docketed

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[1] Substitution of the Carolina Freight Carriers Corporation, appellee here, in lieu of the Mauney Transfer Company, Inc., as applicant, was approved by the Commission on March 8, 1937, in its proceeding numbered MC-FC-1256. Reference hereinafter to Carolina Freight Carriers Corporation or to appellee will be understood to include its predecessor where the text requires such inclusion.

[2] The relevant portions of the governing statute are quoted in the appendix set forth at pages 52 to 58 of the brief of the Commission herein, and we shall not burden the Court with their repetition. We take occasion, however, to point out that section 210 (U. S. Code, Sup. I, title 49, sec. 310), mentioned in section 206(a), has to do with dual operation as both common and contract carrier and therefore has no bearing on the instant case. Neither do the questions of bona fides, seasonal operations, or interruptions of service, likewise mentioned in section 206(a), have any such bearing. We emphasize this question of bona fides because the brief of the Interstate Commerce Commission, unintentionally we are confident, might well leave the impression at page 6 that the application was largely denied because appellee's operations were mala fide in the opprobrious sense in which that term is used in *McDonald v. Thompson*, 305 U. S. 263, and *Slagle Contract Carrier Application*, 2 M. C. C. 127. Such, we repeat, was not the case.

by the Commission as No. MC-2253, Carolina Freight Carriers Corporation Common Carrier Application. The Mauney Transfer Company, Inc., thereby sought a certificate authorizing operation as a common carrier by motor vehicle in interstate or foreign commerce of general commodities (except commodities of unusual value, those in bulk, those requiring special equipment such as tank or refrigerator trucks, those injurious to other lading, livestock, automobiles, and high explosives) (R. 1) between all points in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11,[3] and those in New York east of Binghamton and south of Albany, over irregular routes; and between Cherryville, N. C., and Boston, Mass., over a regular route[4] through Henderson, N. C., Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y. (R. 7). Thus it will be observed that appellee, consistently with its holding out, *itself* restricted its prayer to traffic to the carriage of which its equipment was adopted. It did not seek, as the United States implies at page 18 of its brief, to poach on the preserves of the so-called "specialty" haulers.

The application was assigned for formal hearing before an examiner; hearing was held, at which, incidentally, no evidence was offered in opposition to the prayer of the application (R. 7; 41-155); exceptions were duly filed to the examiner's recommended order (R. 7); and on July 10, 1940, Division 5 of the Commission made the following findings (R. 10-11):

> We find that applicant's predecessor in interest was on June 1, 1935, and continuously since it and its pre-

[3] U. S. Highway 11 extends generally northeastward from Winchester, Va., through Hagerstown, Md., and Chambersburg, Harrisburg, Wilkes-Barre, and Scranton, Pa., to Binghamton, N. Y.

[4] As shown by the evidence, however, all of applicant's operations have been over irregular routes (R. 8, 154).

decessor have been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11, and points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J., (2) of asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass., (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction, (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina, (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C., (6) of canned goods from Baltimore, Md., to Shelby, N. C. (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes.

Except in the unimportant respects just shown, the application was ordered denied, effective August 31, 1940 (R. 11). After the effective date had been postponed at the request of appellee, a petition for reconsideration was filed by appellee on September 11, 1940, which, however, was denied by the Commission on November 4, 1940 (R. 15). Having thus exhausted its remedies before the Commission, appellee brought suit in the lower court (R. 1-6).

The hearing before the court below was held on January 8, 1941; appellee introduced a copy of the testimony and ex-

hibits[3] received by the Commission (R. 40); this evidence is a part of the record here (R. 40-178); and on April 5, 1941, the court below, having previously granted an interlocutory injunction (R. 12-13), rendered its opinion (R. 22-34) that by limiting appellee to the precise points served and specific commodities transported both prior and subsequently to June 1, 1935, and by predicating its opinion on the supposed need of the regular-route common carriers for protection against the apprehended encroachments of appellee and other irregular-route common carriers in like position, the Commission had arbitrarily and unreasonably transcended its powers. Thereupon the lower court set aside and annulled the Commission's order and ordered the cause remanded to the Commission for further proceedings not inconsistent with the opinion of the court.

The briefs for the Government and the Commission would leave the impression with this Court that applicant specialized in the transportation of cotton yarn to the virtual exclusion of all other traffic. That such is far from correct is demonstrated, we maintain, by the following summary of the evidence. Appellee began business in 1931. Its three trucks (R. 77) had increased to eight by June 1, 1935 (R. 26; 62), and to seventeen by the day of the hearing before

[3]Among the exhibits so introduced was Exhibit No. 2, appellee's certificate of registration under the code of fair competition (R. 163-6). By their reference to this certificate (page 4 of the brief of the United States and page 7 of the Commission's brief) appellants would seemingly imply that it is to be accepted as delineating the scope of appellee's operations at that time. In passing, we take occasion, therefore, to point out that it is not urged by any party that appellee was ever a contract carrier (R. 8); that no New England State is mentioned in the certificate, even though it is clearly shown of record that appellee did transport traffic to and from New England; and that, since appellee did not operate empty southbound, it is quite impossible that 90 per cent of its traffic consisted of textile products. On its very face the certificate is defective. Motor carriers quite generally looked upon the national industrial recovery act as something to be tolerated, and no more, and they were notoriously careless in supplying the information for insertion in these certificates.

the Commission's examiner, October 28, 1938 (R. 46). Because all the records of shipments transported by appellee had not been preserved (R. 8; 137; 141), it became necessary at the hearing to supplement the exhibits made up from actual billing by the testimony of appellee's employees and of shipper witnesses (R. 8; 43; 56; 75; 92; 98; 114; 125). Within the territory throughout which appellee sought to do business it hauled everything it could get; it was always seeking more business (R. 60). It hauled everything offered to it (R. 60). It never refused to haul shipments tendered to it (R. 97).

Not only did appellee itself seek business (R. 136), but it employed the services of freight brokers (R. 126; 130-40), who solicited a varied assortment of freight (R. 127-139). One of the partners in this brokerage concern replied in the affrmative to an inquiry whether he distributed to appellee for transportation "new and different commodities along with the growth of the business" (R. 139). This brokerage concern "broadened out and covered quite a radius of territory" in its solicitation endeavors (R. 136). The success which attended appellee's efforts to obtain diversified traffic prior to the "grandfather" date is attested by Exhibits 1 and 3 (R. 155-159; 166).

Since appellee maintained its headquarters in the heart of the Piedmont area of North Carolina, it was only natural that its northbound traffic should consist preponderantly of cotton textile products, but we repeat for emphasis that it did not confine its efforts to those products, that it did in fact transport other commodities northbound and southbound, and that it served many, many points which the Commission has refused it authority to continue to serve. All this will be found in detail in a subsequent chapter, *infra*, pages 24 to 28.

It is enlightening in this regard that the testimony discloses that such carriage is wholly consistent with appellee's general holding out and method of carriage. Thus, for example, witness Nicholson, formerly traffic manager for a producer of pneumatic tires in Charlotte (R. 43-4),

testified that he expected appellee to transport his company's outbound products to whatever points he designated along the eastern seaboard and to bring back shipments to Charlotte from any points in those States from which he drew supplies (R. 44) and that in response to appellee's solicitation he gave it such shipments as he had (R. 45). Witness Griffis, traffic manager for a producer of asbestos products (R. 75; 82), testified that his company shipped generally along the eastern seaboard and into the New England States (R. 77); that his shipments were destined "all along the Atlantic Seaboard" (R. 81); that the shipments usually were made up of consolidated small lots destined to a number of points (R. 81); that his outbound shipments consisted of "asbestos textile products, principally cloth, yarn, packings, tapes, tubings, and there are many other products there" (R. 82); and that he felt perfectly free to call on appellee to transport these various commodities to points which it had not previously served in this seaboard area "because they [appellee] solicited our business on the basis that they were hauling everything and were prepared to haul everything that anybody cared to offer them for transportation" (R. 82) and "represented themselves as wanting to do it, as well as being prepared in the way of equipment and regularly covering that territory * * * along the Atlantic Seaboard to New York and into the New England States" (R. 83). Witness Griffis testified further that "I suppose that every week there were different shipping points"; that "We would always take a complete load of shipments regardless of points destined within that territory, and give them all the shipments"; and that today "there are about three hundred shipping points that are being served by truck" (R. 84). The Court will note that the Commission authorized appellee to transport these asbestos textile products to a total of *twelve* destinations (R. 11).

QUESTIONS PRESENTED.

As may be readily gathered from the foregoing, then, the principal question presented is not, as the Government's brief suggests at page 2, whether the Commission gave due regard to appellee's holding out, if, indeed, it was bound to consider it at all (see footnote 6 at page 12 of the Government's brief). Neither is it, as the Commission's brief suggests at pages 2 to 4 inclusive, whether the finding of the Commission rests on a foundation of substantial evidence. Instead, the principal question is whether the Commission transcended its powers in finding, under the said "grandfather" clause, that appellee's operations are to be restricted to the carriage of no more than each of those commodities which it transported both prior and subsequently to June 1, 1935, and these only to and from the precise[6]

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[6] It is curious that in No. 110, this Term, *Alton Railroad Company* v. *United States*, which deals with the validity of an order of the Commission under this same "grandfather" clause authorizing applicant in the proceeding entitled No. MC-48654, *Fleming Common Carrier Application*, 8 M. C. C. 469, to continue operations as a common carrier in driveaway service of new automotive vehicles, finished and unfinished, and new automotive chassis, from Detroit, Mich., to all points in Alabama, Arkansas, California, Georgia, Kentucky, North Carolina, Oregon, South Carolina, Tennessee, Texas, and Washington, the joint brief in behalf of the United States and the Commission states on page 3 thereof that one of the questions presented to this Court is "Whether the Commission, in authorizing the operations to all points in a State on evidence of actual shipments to a few points only, misconstrued the statute," and then proceeds on page 43 thereof to set forth the following:

> The fact that, as to the points noted and other points, the shipments carried by him were few and separated, or varying in frequency, could not be taken as establishing that Fleming was no longer bona fide engaged in transportation to those points, if that was not the reasonable conclusion to be drawn therefrom, in view of the marketing characteristics of the industry and the fact that his service was not one for which there was steady demand. The fact, too, that Fleming's operations, as evidenced by shipments transported prior to the "grandfather" date, were shown to have been conducted to certain points in a State only, could not be taken to establish that the

points between which it transported each of them during that time, notwithstanding appellee's holding out to transport general commodities within a designated territory, notwithstanding its fitness, willingness, and ability so to operate, and notwithstanding that regularly throughout the years it operated consistently with that holding out.

Subordinate questions presented are:

(1) Whether the Commission transcended its powers in failing to consider facts and circumstances of record which ought to have been considered.

(2) Whether the Commission, in deference to the supposed needs of regular-route common carriers, transcended its powers in basing its decision on considerations which have no relevancy in a proceeding under the said "grandfather" clause.

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operations he was bona fide engaged in were confined to those points, *if such a conclusion would be in conflict with the real character of his operations* made necessary by the marketing characteristics of the industry whose products he moved. (Italics supplied.)

Moreover, at page 49 of the same joint brief the following language is found:

> • • • we do not think that the "grandfather" clause can properly be interpreted as freezing a carrier's operations fast to the precise trips in fact made by him prior to the administrative hearing before the Commission; such a result is in conflict with even the literal language of the clause; that refers to operation on and since June 1, 1935, and there is every probability that no carrier will have made after the "grandfather" date the identical trips made approximately at that date.

Despite the strenuous efforts of the Government at pages 24 and 25 of its brief, we are quite unable to reconcile the position taken by the Government and the Commission in the cited case with that which they take in the instant case; we submit that they are wholly inconsistent.

ARGUMENT.

Plan of Brief.

We appreciate, of course, that, however irreparable the injury which appellee would suffer from the decision of the Commission, we must show further that the lower court properly found prejudicial error in that decision. This it will be our purpose to do. To this end our treatment of the case divides itself naturally, just as it did in the court below, into three parts, namely, (a) that in limiting appellee to a very few commodities between a very few points, the Commission erred as a matter of law in the construction which it placed upon the "grandfather" clause and upon the definition[7] of "common carrier by motor vehicle" as set forth in section 203(a)(14) of the act (U. S. Code, Sup. I, title 49, sec. 303); (b) that it erred as a matter of law in failing to consider facts and circumstances of record which ought to have been considered; and (c) that it erred as a matter of law in going beyond the record to build its decision on a foundation of considerations which have no relevancy. We shall discuss these three, with their many ramifications, in the order just shown, and close our brief with a discussion of the more important of what we hold to be the unsound contentions raised by appellants in their respective briefs.

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[7] For the convenience of the Court we repeat below the pertinent portion of that definition:

> "The term 'common carrier by motor vehicle' means any person who or which undertakes * * * to transport * * * property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes * * *."

There is obviously no significance to be attached to the fact that in 1940 the Congress amended section 203(a)(14) of the act to read:

> "The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of * * * property or any class or classes thereof for compensation, whether over regular or irregular routes, * * *." Section 18(a), Act of September 18, 1940, c. 722, 54 Stat. 920.

The Commission Erred as a Matter of Law in the Construction which it Placed Upon the Definition of "Common Carrier by Motor Vehicle."

At page 309 of its report (R. 10) the Commission states that "Section 203(a)(14) of the act contemplates that a common carrier may transport only a 'class or classes of property,' and we have found in numerous cases that the authority issued under the 'grandfather' clauses of sections 206(a) and 209(a) of the act *should reflect any limitation in the undertaking* of common or contract carriers *as indicated by the service actually rendered* on and since the statutory dates" (emphasis ours). In making this statement, we submit, the Commission has twice erred grievously, first in declaring that the undertaking of a common carrier is to be predicated only upon the service actually rendered on and since the "grandfather" date, and, second, by implying that the service actually rendered by appellee on and after the "grandfather" date was limited to the few commodities which it thereupon authorized appellee to transport.

At common law the test of common carriage is the "holding out," and actual performance as to specific commodities is not controlling. Although so firmly imbedded in the body of the common law is this test that citation of authorities hardly seems required, for ready reference we give some few citations in support of our assertion. A common carrier is one whose business, occupation, or regular calling is the carriage of goods for all persons who may choose to employ and remunerate him. *Dwight* v. *Brewster*, 1 Pick. (Mass.) 50; *Sheldon* v. *Robinson*, 7 N. H. 157; *Fish* v. *Chapman*, 2 Ga. 349; *Schouler on Bailments including Carriers*, #269. When he undertakes the general business of carrying every kind of goods, he is bound to carry for all who offer. *Dwight* v. *Brewster, supra; Pomeroy* v. *Donaldson*, 5 Mo. 36; *Hale* v. *Navigation Co.*, 15 Conn. 539. He cannot lawfully reject some goods and afterwards receive and transport others when at the time of refusal there is room for the rejected goods. *Ocean S. S. Co. of Savannah* v. *Supply Co.*, 131 Ga.

831. He is rightfully made responsible on his general undertaking to carry things for reward, even though the trip be his first. *Fuller* v. *Bradley*, 25 Penn. St. 120; *Steele* v. *McTyer*, 31 Ala. 667. The holding out to the public that one is ready to carry things generally, in pursuance of some regular calling, appears to be the prime element that distinguishes the common carrier from the mere private carrier for hire. *Schouler on Bailments including Carriers*, #271.

While it is true that even at common law there can be "limited" or "special" carriage, *Farmers' & Mechanics' Bank* v. *Transp. Co.*, 23 Vt. 186, *Bennett* v. *Dutton*, 10 N. H. 481, that status does not arise because actual performance is limited or special, but because the carrier's holding out or undertaking took on that limitation by affirmative act rather than by implication from previous carriage or lack of it. *Tunnel & Short* v. *Pettijohn*, 2 Harr. (Del.) 48. His business may be restricted within such limits as he may deem expedient, *Honeyman* v. *Oregon & California R. R. Co.*, 13 Oreg. 352, *Dickson* v. *Great Northern Ry. Co.*, 18 Q. B. Div. 176, *Schouler on Bailments including Carriers*, #289, but if he accepts goods not within the line of his business, he assumes the liability of a common carrier as to the specific goods accepted. *New York C. R. Co.* v. *Lockwood*, 17 Wall. 357; *Kimball* v. *R. Co.*, 26 Vt. 248. The restricting of a common carrier to the carriage of particular commodities by governmental fiat was and is unknown to the common law. Incidentally, under Part I of the Interstate Commerce Act the test of common carriage, at least by railroad, is also the common-law test, since the statute expressly directs itself to common carriers by railroad and does not undertake to define the term [U. S. Code, title 49, sec. 1].

While it is true also that part II of the Interstate Commerce Act, by section 203(a)(14), does undertake at least a partial definition of a common carrier by motor vehicle, and while we cheerfully concede that the Commission is bound by that definition as far as it goes and by the "grandfather" clause, all must further agree that beyond that point we

again are bound by the common-law concept of common carriage, namely, the "holding out." Although we have made diligent effort, we have never succeeded in tracking down the real source of these certificates limited to a handful of commodities. This practice by the Commission may have had its genesis in the failure of applicants under the "grandfather" clause, because of their limited knowledge of the law or their lack of foresight, to apply for more than certain specified commodities, or it may have stemmed from the proposition that the definition contained in section 203(a)(14) employs the clause "or any class or classes of property." If it was for the first reason, well and good, for we recognize that the Commission could hardly be criticized for granting to an operator precisely what he asks; but if it was for the second, then we reiterate that the Commission has erred most distressingly. If requests for certificates on commodities generally are pared to a minimum because, despite his holding out, his ability to make it good, and his efforts in furtherance of it, an operator can show *performance* as to certain commodities only, and if that action is bottomed on the proposition that the definition of a common carrier qualifies the word "property" by the expression "or any class or classes of property," then we most earnestly urge that the Commission has given to the qualifying expression a meaning which brings about so unjust a result that it could not have been intended by the Congress. Every act should be construed to carry out the legislative purpose. *Texas & P. Ry Co.* v. *Interstate Commerce Commission*, 162 U. S. 197; *St. Louis & O'Fallon Ry. Co.* v. *United States*, 279 U. S. 461. By what course of construction can the Congress be thought to have intended to drive motor carriers from the fields which they had long occupied?

We firmly believe that what the Congress intended to save by the "grandfather" clause of section 206(a) was the right of an operator to continue to earn a living out of his antecedent occupation. In this concept it seems manifest that the clause contemplates continued *operation* and not the contin-

nous transportation of *particular commodities*. We submit that such an interpretation is both logical and human. As stated by this Court in *United States* v. *Maher*, 307 U. S. 148, 153, "By this legislation Congress responded to the felt need for regulating interstate motor transportation through familiar administrative devices, *while at the same time it satisfied the dictates of fairness by affording sanction for enterprises theretofore established*" (emphasis ours). There being no question at all concerning the purpose of the "grandfather" clause, see how simple it is to visualize a clear field of operation for the expression, "or any class or classes of property," which obviates the necessity of giving that expression the restrictive effect here being given to it by the Commission. The expression, it will be observed, is in the disjunctive in its relation to the general term "property." Also it contains words of "inclusion" and not definitive or restrictive words. The expression is simply meant to make it plain for all to see that the regulation of common carriers by motor vehicle shall embrace "specialty haulers" as well as haulers of every conceivable classification of property under the common law. Under such an interpretation, which is not only reasonable but compelled, the expression has no application and no intendment which would authorize its use in paring an application for commodities *generally* to proof of specific performance as to *particular commodities*. Under it, too, the "grandfather" clause becomes a shield; under the Commission's unhappy interpretation it becomes an engine of destruction.

At page 17 of its brief the Government cites *Slagle Contract Carrier Application*, 2 M. C. C. 127, among others, in support of its assertion that the Commission has consistently taken the view in administering the act that the "grandfather" proviso affords sanction to carriers only with reference to commodities the transportation of which formed a substantial part of their business and to places substantially served by the enterprise. An examination of the decision in question will reveal that it affords no sup-

port whatever for this assertion. In the decision in question, one of the earliest under the act and one of the most thoroughly considered opinions[8] ever rendered by it, the Commission recognized that the operating authority to be granted under the "grandfather" clause is not to be confined to the particular commodities transported if those commodities did not faithfully reflect the undertaking. This is evidenced by the following quotation from page 136 of its report:

> A number of those who filed exceptions to our tentative report made the point that the terms of the certificate should be governed, not by the specific commodities which applicant can show that he has actually hauled in the past, or the specific routes over which he has operated, but by the nature of his undertaking or holding out to the public. Most motor carriers of property have had only a very limited capacity. It is argued that if, for this or similar reasons, the traffic of a carrier happened in the past to be confined to certain particular commodities, its certificate ought not to be so restricted if the carrier actually held itself out to haul commodities generally. *There may be force in this contention.* However, it is clear that a common carrier can lawfully restrict its undertaking to the carriage of specific commodities between specific places and over specific routes. *The evidence here indicates that there was such a restriction in the undertaking of applicant and that its traffic was not so confined as a mere result*

[8] As witness the opening paragraph of the report:

> "Exceptions were filed by protestant rail carriers to the order recommended by the examiner to whom the matter was referred and the case was orally argued. A report expressing our tentative conclusions was issued and all interested persons and public bodies were invited, without formal intervention, to file exceptions to that report. Numerous briefs in opposition to and in support of our tentative conclusions were filed, and we have had the benefit of further oral argument. Our conclusions differ in part from those recommended by the examiner and those expressed in our tentative report."

The Commission does not customarily accord so full an opportunity for exhaustion of a subject.

of circumstances. Our tentative report proposed to restrict the certificate accordingly and no exceptions were filed by applicant. (Emphasis ours.)

In the cited case the Commission did restrict the applicant to specified commodities between specified points over specified routes, but it will be noted that it did so, not because of the limited number of commodities transported by the applicant prior to June 1, 1935, and thereafter, but because the evidence disclosed that *applicant had restricted its undertaking* to the carriage of those very commodities *and no others*, between those very points *and no others*, and over those very routes *and no others*. By failing to file exceptions, moreover, the applicant acquiesced in that finding.

If the Commission had been content to follow the precedent set by the above-quoted portion of its opinion in the *Slagle case* all would have been well for this appellee. This, however, it has not done. Instead, it has renounced that precedent by looking only to the several commodities transported by appellee *as a mere result of circumstances*. And even in doing that, as we shall explain in another chapter, it has ignored much of the testimony of record.

Now let us compare the situation presented by the *Slagle case* with that here presented. There we found a carrier who *himself* restricted his undertaking to the transportation of malt beverages; empty returned beverage containers; canned goods, fresh meats, packinghouse products, and frozen poultry; and agricultural machinery and parts. Seemingly these commodities moved in sufficient volume in both directions to enable him to operate profitably. He needed nothing more to balance his operations and he accordingly undertook nothing more. In the instant case the situation is quite different. The statement of the Government at page 18 of its brief that, "The commercial practice among motor carriers has been that the operations of a particular carrier are limited to * * * the transportation of one or not more than a few identifiable classes of commodities," is utterly contrary to the facts unless the statement is to be accepted as an admission by the United States that

"general commodities" are to be deemed a "class * * * of property" as defined in section 203(a)(14) of the act. We all know that for the years preceding the passage of the act, large numbers of motor carriers operated over irregular routes throughout considerable territories in the carriage of *every commodity which could be hauled in their equipment.* Such a carrier was the appellee. Appellee was in the transportation business within a large number of States. Its desire was to operate profitably. In order to do so it found it necessary—and undertook—to haul in all directions within the territory[9] every commodity which it could obtain from the shippers. As succinctly stated by the witness who was appellee's general manager during a large part of 1934 (R. 60), "anything we could get to haul, we did. We were always looking for more business." (R. 60) Its success is attested by a gradual increase in the number of commodities hauled by it prior to June 1, 1935.

Any notion that appellee restricted itself to a few selected commodities, as did the applicant in the *Slagle case*, will be promptly dispelled by mere mention that among the commodities transported by appellee prior to June 1, 1935, were cotton yarn (R. 115; 136; 155-9), yarn tubing (R. 155), cones (R. 156), skeins (R. 156-8), cotton bedspreads (R. 115; 157), petroleum products (R. 58-9; 93-5; 116-7; 157-8), canned goods (R. 59; 102; 116; 132; 157), medicine (R. 157), batteries (R. 102; 116; 157-8), linoleum rugs (R. 101; 113; 116; 134; 157-8), paper (R. 117; 132, 157), brazil nuts (R. 157), rayon (R. 158), machinery (R. 56-7; 66; 100; 109;

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[9] For added emphasis, we reiterate that in their joint brief in No. 110, *Alton Railroad Company* v. *United States*, appellants here urged that "The fact, too, that Fleming's operations, as evidenced by shipments transported prior to the 'grandfather' date, were shown to have been conducted to certain points in a State only, could not be taken to establish that the operations he was bona fide engaged in were confined to those points * * *." Thus in that case these appellants urge that the term "bona fide operation as a common carrier by motor vehicle" must be construed as embracing service greatly in excess of the actual trips made to the precise points at which deliveries were made, whereas here, under circumstances which differ not one whit in principle, they urge the contrary.

115-7; 157-8), roofing (R. 102; 117; 158), wire (R. 59; 101; 103; 158), nails (R. 103; 158), screen cloth (R. 116; 158), enamelware (R. 158), electrical supplies (R. 158), plumbing supplies (R. 158), tires (R. 44; 58; 99; 115), asbestos products (R. 62; 76-84; 100; 166), cocoa (R. 102; 116; 132), general hardware (R. 102; 116), chemicals (R. 44; 102; 116; 119; 132-3), beer (R. 102; 117), paper containers (R. 117), cotton fabric (R. 57), supplies (R. 58), empty barrels and boxes (R. 58-9), and cotton piece goods (R. 99). How could it be better evidenced that the character of the freight hauled by appellee was the result purely of circumstances and not the result of any restriction in its undertaking?

Experience teaches that seldom can any carrier survive if its loaded movement is wholly in one direction—and then only under most exceptional circumstances. It is axiomatic that a heavy empty movement in any one direction dissipates the profits from the loaded movement in the other. This was perhaps even more true in the days of unregulated, cut-throat competition prior to the "grandfather" date than it is today. These being the conditions confronting appellee, who could dream that it deliberately restricted itself, as the Commission has mistakenly found (R. 10-11), to the carriage southbound of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte; petroleum products from Sewaren and Marcus Hook to Columbia and Greenville, S. C., and points in North Carolina; linoleum from Paulsboro, Marcus Hook, and East Walpole to points in North Carolina and to Spartanburg and Greenville, S.C.; canned goods from Baltimore to Shelby, N. C.; beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C.; and roofing and screen wire from York, Pa., to points in North Carolina? It is an insult to the business sagacity of an operator to suppose that it would undertake to haul canned goods from Baltimore to Shelby only, or beer from Newark to Gastonia and Wadesboro only. Mere mention of such an undertaking demonstrates its absurdity! Surely this Court

will agree that the trucking industry did not attain its present prominence by such maladroitness.

Since long prior to the passage of the act many motor carriers have operated over irregular routes between the North and South in just such carriage as that undertaken by this appellee. It is quite conceivable that by reason of changes in the channels of traffic the Commission will ere long be called upon to decide a "grandfather" case in which an irregular-route applicant no longer carries any commodity which it hauled prior to June 1, 1935, or, even more probable, no longer carries any commodities from and to the points between which it carried them prior to June 1, 1935. What then? Will the Commission deny the application in toto? Such a finding would be incredible—and yet such would be the finding if the illiberal course pursued by the Commission in the instant case were to be followed in the hypothetical case which we have just instanced. The effect would be, quite obviously, that the "grandfather" clause, designed by the Congress to protect the operators who had been in business prior to June 1, 1935, would become a death sentence. It is no answer that such a case may never present itself; the principle cannot be altered by blinking at it.

We repeat, then, that such a finding would be simply unthinkable. But, we repeat also, such to a no less damaging degree is the very finding of the Commission here, for it has refused to grant this appellee the right to haul a large number of commodities because since June 1, 1935, it has not continued to haul them with regularity between the exact points from and to which it hauled them before. We feel no hesitancy in voicing the belief that if the Congress had visualized such a state of affairs it would never have placed the stamp of its approval upon the act. It could not have foreseen that regulation might become destruction.

We believe that it will be quite generally conceded that the nature of the undertaking of a given applicant is to be determined from all the circumstances surrounding its operation. Yet here we find the Commission predicating its

decision on the *one* circumstance of the exact commodities regularly carried over a span of years. No weight is given to the fact that appellee's equipment is not designed for the carriage of any special class of commodity, such, for example, as household goods, liquids in bulk, automobiles, or commodities requiring refrigeration, but is adapted to the carriage of practically all package freight. No weight is given to the fact that it carried every type of freight which it could obtain from the shippers. No weight is given to the fact that any other undertaking on its part would have been business suicide. No weight is given to the fact that it did not refuse to haul any freight proffered to it. All these facts are brushed aside in favor of the simpler—even though indefensible—method of counting commodities and points. By its application appellee has already eliminated those commodities and that territory which it did not hold itself out to serve.

Another novel feature of the Commission's decision is its frank substitution, in the definition of a common carrier by motor vehicle in section 203(a)(14), of the words "any commodity or commodities" for the words "any class or classes of property" employed by the Congress. Obviously, the Commission considers the few commodities which it has authorized appellee to haul as being *classes* of property. But if the Congress had had in mind a few specific commodities, would it not have expressed its thought in clear and unmistakable language, rather than to use the generic term it did? The answer is manifestly in the affirmative. Thus we are brought sharply back to the common-sense interpretation which we ask this Court to place upon the definition in section 203(a)(14). Specifically, we urge, the Congress had in mind the natural classes of property which it knew were then in course of transportation by motor vehicle, and in the interest of certitude specifically made the carriers of those classes subject to regulation. The best known of these classes prior to the passage of the act were household goods, heavy machinery, liquid petroleum products, agricultural commodities, new automobiles,

commodities of extreme value customarily carried in armored cars, explosives and other dangerous articles, and commodities requiring refrigeration, to name but a few.

Peculiarly enough, the Commission itself, under the powers vested in it by section 204(c)[10] of the act (U. S. Code, Sup. I, title 49, sec. 304) to establish just and reasonable classifications of groups of carriers included in the term common carrier by motor vehicle, has recognized the reasonableness of the interpretation for which we here pray, for in *Classification of Motor Carriers of Property*, 2 M. C. C. 703, after stating that "our basic purpose has been to ascertain and define generally the *natural divisions which are now present in the industry*" (emphasis ours); it proceeded to group all carriers which haul such commodities as those which it has authorized this appellee to haul, as "carriers of general freight," and to break down all others into groups arrived at by consideration of the type of equipment and special service rendered. Among these last, for example, were "carriers of household goods," "carriers of heavy machinery," "carriers of liquid petroleum products," etc. Notwithstanding that it said also in the decision in question that the classification of carriers was particularly important "in connection with the issuance of certificates," it has here departed abruptly from the classification there made. Nowhere save in its grants of operating authority has it attempted to enforce a distinction between carriage of specific commodities falling within the descrip-

[10] So far as here pertinent, section 204(c) reads as follows:

> The Commission may from time to time establish such just and reasonable classifications of * * * groups of carriers * * * included in the term "common carrier by motor vehicle" * * * as the special nature of the services performed by such carriers * * * shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed by the carriers * * * so classified or grouped, as the Commission deems necessary or desirable in the public interest.

tion of "general freight." Every commodity transported by this appellee falls within the description of "general freight," but in the eyes of the Commission it is not "general freight." Instead, it is cotton yarn, asbestos textile products, canned goods, beer and ale, and so on!

The Commission Erred as a Matter of Law in Failing to Consider Facts and Circumstances of Record.

Section 206(a) refers to a common carrier in bona fide operation on June 1, 1935, within the territory for which application is made. No hard-and-fast rule is laid down by the Congress for determining the business in which a given carrier was engaged on the date mentioned, and we must look to all the facts and circumstances for the answer. The Commission may not arbitrarily reject evidence which ought to have been considered. *Texas & P. Ry. Co.* v. *Interstate Commerce Commission, supra; Interstate Commerce Commission* v. *Alabama Midland Railway Company*, 168 U. S. 144; *Interstate Commerce Commission* v. *Northern P. Ry. Co.*, 216 U. S. 538. Although in its opinion the lower court did not touch on this phase of our bill of complaint (R. 4) and of our presentation before it, presumably because its decision otherwise made it unnecessary to do so, if the Commission did, as we maintain, fail to consider facts and circumstances of record which ought to have been considered, then its order in the instant case must be set aside for that reason even if for no other.

It is immaterial, of course, that the Commission did not specifically state that it failed to consider all the evidence, for if the failure of the Commission to make such a statement in its report were to be deemed to render ineffectual the powers of the courts, then any administrative tribunal could evade their restraining action by the mere device of a statement that all evidence had been considered, and the courts would become mere subordinates of the administrative tribunals.

It goes without saying that in order to determine in what business a motor carrier was engaged on June 1, 1935, we must look far back of June 1, 1935, if we are to do complete justice to the carrier. This is because of the well known fact that the business done by any carrier is in a constant state of change. The general business done and the commodities hauled may change almost from day to day, as shippers go out of business, or switch their patronage to other carriers, or discontinue shipping to one point and begin shipping to another within the same territory. Present-day emergency conditions caused by the nationwide preparations for all-out war exemplify these uncertainties. Manifestly, since litttle can be learned from an examination of the transportation performed by a given carrier on June 1, 1935, or for any short period prior to that date, the only fair way in which to determine the exact limitations of his operations as of June 1, 1935, is to examine *everything* done over a number of preceding years. Only in this way is it possible to determine the nature of his holding out "in the natural and normal course of business" (*Eucalyptus Wood Co. Common Carrier Application*, 16 M. C. C. 468) and his operation pursuant to that holding out. In no other way, employing the language of this Court in *United States v. Maher, supra*, can the statute possibly satisfy the dictates of fairness by affording sanction for enterprises theretofore established. So logical does this appear that it seems impossible that any tribunal should fail to consider such a revealing period. And yet the Commission has done the exact opposite; instead of inquiring into appellee's operations for a reasonable period of years, it has selected as a starting point some indefinite date in 1934 and has ignored (a) all the evidence regarding shipments transported in 1933, (b) at least some of the testimony in respect to shipments transported in 1934, and (c) the oral testimony adduced in support of the exhibits. Having thus rejected so large a part of the evidence, it is not to be wondered at that the Commission has reached so unfair a conclusion; it was

impossible, indeed, from the evidence which it did consider, to grasp the inherent nature of the service which appellee has accorded from the very beginning of its operations in 1931.

We need not go beyond the Commission's report itself for proof that the Commission considered only a short period prior to June 1, 1935, for on page 306 of its report (R. 8) appears the statement that "An exhibit comprising a list of shipments handled during the period from *1934* to 1936, inclusive, and also a few shipments handled during 1937, was submitted in evidence * * *" (Emphasis ours). As the Court will see, however, the exhibit contains a record of a large number of shipments which moved in *1933*, and many of these consist of commodities for the transportation of which the Commission has not granted this appellee authority. Among the shipments so moving in 1933, for example, are storage batteries from Jersey City, N. J., to Monroe and Raleigh, N. C. (R. 157), paper from New York, N. Y., to Charlotte (R. 157), and brazil nuts from New York to Charlotte (R. 157).

That the Commission likewise literally expunged from the record testimony respecting many of the shipments which moved in 1934 is readily apparent from the fact that it has omitted all mention of them. Among the 1934 shipments appearing in the exhibits which have obviously been excluded from consideration, since no corresponding authority appears in the report of the Commission, are cotton yarn from Belmont, N. C., to Woonsocket, R. I. (R. 155); cotton yarn from Cherryville to Baltimore (R. 157); canned goods from Baltimore to Charlotte and Gastonia (R. 157); medicine from Baltimore to Dallas, N. C. (R. 157); rayon from Lewistown, Pa. to Spindale, N. C. (R. 158); nails from Sparrows Point, Md., to Monroe, N. C. (R. 158); wire, plumbing supplies, and enamelware from Baltimore to Monroe (R. 158); and electrical supplies and batteries from Jersey City to Monroe (R. 158). When we couple this partial list of disregarded shipments with what we have al-

ready said about the year 1933 and with what we shall say in a moment about the oral testimony of our witnesses, we believe that the Court will agree that an imposing array of testimony has received no consideration whatsoever.

As explained in the record and mentioned in the report of the Commission (R. 8; 137; 141), many of the records of the appellee had not been preserved and were therefore not available for use in compiling exhibits. Under those circumstances appellee quite properly supplemented the documentary evidence with the oral testimony of those who had been familiar with the early operations. Yet that testimony has been lightly dismissed. May we interject the thought that the Congress was quite familiar with the fact that many of the motor carriers did not maintain careful records—or even any at all—prior to the passage of the act, and that oral testimony would become necessary in perhaps hundreds of cases?

We turn now to the testimony of the aforementioned witnesses. Witness Mauney, who drove for appellee from 1931 until shortly before the hearing, testified to the following carriage prior to June 1, 1935: Cotton yarn from numerous North Carolina points to Norwich and Danielson, Conn., Northampton, Franklin, Brockton, and Lowell, Mass., and West Warwick, R. I. (R. 115); automobile tires from Charlotte to Plainfield and Newark, N. J., and New York (R. 115); bedspreads from Lincolnton, N. C., to Washington, D. C., and Baltimore (R. 115); machinery from Altavista, Va., to Lincolnton and from Raleigh, N. C., to Rock Hill and Wellford, S. C. (R. 115); motors and a machine from New York to Ranlo, N. C. (R. 116); cocoa from New York to Charlotte (R. 116); canned goods from Baltimore to Charlotte (R. 116); batteries from Jersey City to Richmond and South Hill, Va., and Raleigh and Monroe (R. 116); general hardware from Baltimore to Monroe (R. 116); chemicals from Linden and Woodbridge, N. J., to Charlotte and from Woodbridge to Kannapolis, N. C. (R. 116); chemicals from Camden, N. J., and Philadelphia, Pa., to Burlington and

Charlotte (R. 119); oil from Sewaren, N. J., to Danville, Va., and from Marcus Hook, Pa., to Spartanburg, S. C. (R. 116-7); beer from Newark, N. J., to Hickory, N. C. (R. 117); paper from New York to Cramerton, N. C. (R. 117); machinery from Philadelphia to Valdese, N. C. (R. 117); and paper containers from Philadelphia to Clover, S. C. (R. 117). This witness testified also that between the beginning of his employment and June 1, 1935, appellee gradually served more points and hauled more commodities (R. 118) and that since that time there had been no change in appellee's operations (R. 120).

Witness Hudson, who solicited freight for carriage by appellee, stated that prior to June 1, 1935, appellee's territory gradually broadened until it embraced "quite a radius" and that between the North and the Carolinas appellee handled a monthly average of twenty loads which he himself solicited (R. 141). This was in addition to the other traffic transported by appellee.

We invite the particular attention of the Court to the testimony of witness Griffis, traffic manager of the Southern Asbestos Company, of Charlotte, who introduced in evidence an exhibit showing a few of the points to which appellee had hauled the products of his company, but testified further that the tabulation was by no means complete, since his company shipped generally along the Atlantic Seaboard and into the New England States. Specifically he mentioned, in addition to the points for which the Commission has granted operating authority, Baltimore, Md., Hartford and New Haven, Conn., and Worcester, Mass. (R. 77). And yet the Commission states (R. 9) that "the only points shown to have been served in the transportation of its products from Charlotte are Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Patterson, N. J., New York, Middletown, Conn., Providence and Pawtucket, and Boston and Hudson, Mass. * * *"

Witness Sullivan, who drove for appellee during parts of 1933 and from March until September, 1934 (R. 56), testi-

fied to the following transportation which the Commission has entirely thrown out of consideration: Textile machinery from Altavista, Va., to Lincolnton, South Side, and Long Shoals, N. C., and looms from Salisbury, N. C., to Rock Hill and Spartanburg, S. C., and from Charlotte to Chester, S. C. (R. 56-7); cotton yarn from Clover, S. C., to Chester and Conshohocken, Pa. (R. 57); cotton fabric from McColl, S. C., to Conshohocken (R. 57); tires from Charlotte to Boston and Lawrence, Mass., and New York (R. 58); and canned goods from Baltimore to Charlotte, Gastonia, Albemarle, Sanford, and Shelby, N. C., and from Frederick, Md., to Charlotte (R. 59).

Witness Dellinger, who drove for appellee from March, 1931, until long after June 1, 1935 (R. 98), likewise testified to the carriage of numerous shipments prior to June 1, 1935, which the Commission did not choose to consider. Among these are cotton-mill products from Clover, S. C., to many destinations throughout the East, including Wilmington, Del. (R. 99); tires from Charlotte to New York, Boston, and Lawrence (R. 99-100); textile machinery from Altavista, Va., to Lincolnton, N. C., from Salisbury, N. C., to Rock Hill, S. C., and from Kershaw, S. C., to Cherryville (R. 100); tire fabric from McColl, S. C., to Conshohocken (R. 100); petroleum products from Sewaren to Florence and Spartanburg (R. 101); chemicals from New York, Brooklyn, Woodbridge, and Camden to Kannapolis, N. C., and Abbeville, S. C. (R. 102); beer from Newark and Baltimore to Gastonia, Wadesboro, and Hickory (R. 102); batteries from Jersey City to Richmond, Raleigh, and Monroe (R. 102); canned goods from Swedesboro, N. J., and Baltimore to Charlotte, Albemarle, and Sanford, N. C. (R. 102); cocoa from New York to Charlotte (R. 102); hardware from Baltimore to Monroe (R. 102); shotgun shells from Bridgeport and New Haven, Conn., to Charlotte (R. 102); and nails and baling wire from Sparrows Point, Md., to Charlotte and Shelby (R. 103).

Not only did the Commission cast aside as worthless the convincing testimony of these witnesses, but it even went so

far as to spurn in part the documentary evidence for the first five months of 1935. For example, the Court will note from Exhibit 1 that the Commission gave no weight at all to the following shipments, among others, during that period: Cotton yarn from Belmont to Coventry, R. I., Easthampton, Mass., and Danielson and Stonington, Conn. (R. 155); quiller machines from Fall River, Mass., to Cherryville (R. 157); petroleum lubricating oils from Sewaren to Gaffney, S. C. (R. 157); canned goods from Baltimore to Charlotte (R. 157); machines from Philadelphia to Valdese (R. 158); air compressor from Philadelphia to Cherryville (R. 158); and petroleum products from Sewaren to Spartanburg, Gaffney, and Florence, S. C. (R. 158; 162). No explanation for this omission, or for the omission of the aforementioned 1934 shipments, appears in the report, unless it be the statement that "the commodities shown to have been handled with a degree of regularity both prior to and since June 1, 1935," are those thereafter specified. We have already discussed the nature of appellee's business through the years; at this point we content ourselves with the bare observation that only a complete misconception of the requirements of common carriage could demand that a motor carrier transport subsequently to June 1, 1935, each and every commodity which it transported prior to that date, and between precisely the same points, if it is to receive authority for their carriage.

The Commission Erred as a Matter of Law in Basing Its Decision on Considerations Which Have No Relevancy.

At pages 308 and 309 of its report (R. 10) the Commission had the following to say:

> Furthermore, we have frequently stated that authority to transport general commodities throughout a wide territory, over irregular and unspecified routes, pursuant to the "grandfather" clauses of the act, should be granted to a carrier only when such carrier's right thereto has been proved by substantial evidence. To do otherwise would create the very ills which regulation is

designed to alleviate, namely, congestion of highways, destructive rate practices, and unbridled competition. Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered, to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service.

Strangely enough, the Commission has first rejected the substantial evidence introduced by appellee and has then proceeded to disparage its supposed lack. By what tenuous reasoning it could justify this course must forever remain obscure, but whatever it may have been, that course is so prejudicial to appellee as to demand the condemnation of this Court, just as it drew the censure of the lower court (R. 24; 33). First and most significant is the fact that there is not one word of testimony in the record to indicate that the granting of the rights prayed by appellee would create any congestion of the highways whatsoever, would create any destructive rate practices whatsoever, or would create any unbridled competition whatsoever, and neither is there any testimony that this appellee would invade the routes of the regular-route operators for the sole purpose of handling the cream of the traffic. The Commission has simply drawn on its imagination in the most damaging way to this appellee; by a series of what are no more than flimsy catch-phrases it has attempted to bolster up a finding which is entirely lacking in factual or legal basis. Cases before the Commission should not be won or lost by the Commission's deftness in phrase-making. They should turn on a thoughtful application of the law to the unvarnished facts of record. The lower court quite properly recognized that the instant case did *not* turn on such an application.

The second damaging aspect of the above-quoted portion of the decision is that it hinges upon considerations which have no place in a case brought under the "grandfather" clause. We challenge anyone to find anywhere in

the act a single word or phrase which indicates that any one of the considerations in question shall come into play in a "grandfather" application. To the contrary, dealing seriatim with these considerations, we find that section 208(a)[11] [U. S. Code, Sup. I, title 49, sec. 308] very definitely prohibits the Commission from restricting the right of a carrier to add to its equipment anywhere within its territory; that section 216[12] [U. S. Code, Sup. I, title 49, sec. 308] gives the Commission full authority to fix the minimum rates and charges of motor carriers and thus to prevent destructive rate practices; and that the section just mentioned and others designed for the same purpose vest in the Commission such authority as may properly be exercised over competition. Is it to be thought that the Commission may deny operating authority under the "grandfather" clause to two carriers, let us say, in the same territory, merely because a grant of such authority could result in keen and perhaps unbridled competition? Such a thought is utterly fantastic, as the Commission would no doubt be the first to concede if the question were so posed to it. Yet that is the very thing which it has done here!

In going beyond the one question whether appellee was in bona fide operation as a motor common carrier of general commodities on June 1, 1935, within the territory for which application is made, and whether it has so operated since, the Commission has been palpably guilty of indulging in pure conjecture and of considering circumstances which could not legally influence its conclusion. For such prejudicial error the order of an administrative tribunal must be set aside. See concurring expression of Mr. Justice Brandeis in *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, and cases therein cited at page 75.

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[11] See page 56 of the Commission's brief.

[12] So far as here pertinent, section 216 is set forth in the appendix hereto, *infra*, page 40. The Commission has frequently exercised this power to prescribe minimum bases of rates. See, for example, *New England Motor Carrier Rates*, 27 M. C. C. 1, and the prior reports therein cited.

It is no answer to state, as does the Commission at page 49 of its brief, that "If authority were granted to a carrier, pursuant to the grandfather clause, to operate over irregular and unspecified routes for the transportation of general commodities throughout a wide territory, without proof by substantial evidence of their right thereto, such carriers would thereby obtain official sanction to invade the regular routes to obtain the cream of the traffic available thereon in so-called regular-route service." As well find that corresponding authority granted to a regular-route carrier under the "grandfather" clause would accord it official sanction to transport the cream of the traffic carried at times by an irregular-route carrier! The decisions of the Commission will be searched in vain for an example of such solicitude for the irregular-route carriers. Incidentally, the Commission does not voice an opinion as to just how this invasion would be accomplished. Most assuredly, bearing in mind the provisions of section 216(g), *infra*, page 40, it should not be through the medium of rates reduced to an unreasonable level.

Neither is it any answer (page 16 of the Government's brief) that "A construction which effected any other result [than the destruction of appellee's business effected by the Commission] would largely frustrate the regulatory purpose of the statute." What regulatory purpose, pray? Observe how carefully the Government avoids an exposition of the respects in which that purpose would be frustrated. Here we have merely another example of the manner in which by vague generalities appellants seek to becloud the real issues. How can the granting of authority to an operator to continuine in its antecedent occupation frustrate any purpose of the statute? Manifestly, it cannot. And we repeat that the purposes which the Government must have in mind, as expressed in section 202(a) of the act (quoted at page 31 of the Government's brief), are met in every respect by sections of the statute specifically designed to accomplish them.

The Loving Case Furnishes No Precedent.

At pages 10 to 15 of the Government's brief and at pages 16-19 of the Commission's brief it is urged that decision of the instant case is controlled by *Loving* v. *United States*, 32 Fed. Supp. 464, affirmed *per curiam*, 310 U. S. 609. Those proceedings grew out of *Loving Common Carrier Application*, 12 M. C. C. 571, wherein the Commission, acting under the "grandfather" clause, authorized the applicants to transport specified commodities over irregular routes between all points in Oklahoma, on the one hand, and points in Colorado on and east of U. S. Highway 87, on the other hand. U. S. Highway 87 extends from Raton, N. Mex., on the south, through Trinidad, Pueblo, Colorado Springs, and Denver, Colo., to Cheyenne, Wyo.

A brief review of the facts will demonstrate that the *Loving case* does not afford a sound precedent for decision here. Bearing in mind that the applicants there operated but one truck on and before the "grandfather" date, it is significant that they first filed an application for authority to transport general commodities throughout the length and breadth of the ten States of Mississippi, Louisiana, Arkansas, Missouri, Oklahoma, Texas, Colorado, Wyoming, Arizona, and California—a veritable empire. In an amendment filed nearly a year later they added to their claim, as an afterthought, the States of Kansas and New Mexico, increasing the total States to twelve, an area of more than one and one-quarter million square miles. At the hearing before the Commission they reduced their claim to five western States, namely Oklahoma, Kansas, Texas, Colorado, and New Mexico. The original claim and the subsequent amendment prove the impossibility of the claimed holding out, and, indeed, demonstrate that applicants themselves had no conception of the extent of their holding out. It is a fair inference that in their one truck they merely roamed gypsy-fashion through the West and Southwest, transporting only when the spirit or the need for income moved them to it. The claimed holding out was ludicrous, of course;

the number of long-haul trips which could be made from one end of this territory to the other in a period of months would be so few as to be negligible. Confronted with such an absurd application, and furnished with virtually no proof, what could the Commission do but exercise its best judgment on the actual carriage as constituting the true undertaking, and what could the Court do but refuse to substitute its judgment for that of the Commission?

The entire evidence of transportation dealt with a total of thirty shipments prior to June 1, 1935, throughout the vast claimed area. Of these thirty shipments, twenty-three originated at or were destined to Oklahoma City, Okla., or Denver, Colo. The remaining seven consisted of shipments from Denver to Liberal, Kansas., from Lawrence, Kans., to Tulsa, Okla., from Chickasha, Okla., to Greeley and Alt, Colo., from Colorado Springs, Colo., to Duncan, Okla., from Oklahoma City to Fort Collins and Eaton, Colo., and from or to Texas points. No shipments to or from Texas were transported subsequently to June 1, 1935. Obviously, applicants' ability to serve and their actual operations were not consistent with their preposterous alleged holding out. Yet, may the Court please, the Commission, in consideration of evidence of six points in Colorado and four in Oklahoma, authorized these applicants to transport between all of Oklahoma and the more important half of Colorado.

If the same liberality had been shown in the instant case appellee would most certainly now be authorized to transport general commodities throughout the whole of its claimed territory. Here we have a territory which, though important, is relatively small and rapidly traveled. Here we have a considerable number of vehicles at all times in operation. Here we have a wide variety of traffic transported between places scattered over the whole of the claimed territory. Here we have testimony which proves that the undertaking of appellee could only have been that which it claims, unless we attribute to it a strange perversity of purpose. An operation of this scope cannot be compared

with the nomadic wanderings of the applicants in the *Loving case*. A contrast, yes; but a comparison, no!

The Eastern Carrier Corporation Case Turned on the Lack of Evidence Before the Court.

Appellants endeavor likewise to make much (page 15 of the Government's brief and pages 35-6 of the Commission's brief) of *Eastern Carrier Corp.* v. *United States*, 31 Fed. Supp. 232, which dealt with the Commission's decision in *Eastern Carrier Corp. Common Carrier Application*, 14 M. C. C. 430. They contend that the District Court upheld the Commission's construction of the statute. But see the following excerpts from page 238 of the decision of the District Court:

> We entertain no doubt that the Commission under the A has the power to restrict the plaintiff *to the type of service it was performing on June 1, 1935*, not only a to the routes operated but also as to the class of commodities which it carried. * * * It was obviously the intention of Congress by the enactment of the grandfather clause to preserve to the carrier its right to transport commodities or articles in commerce of the kind which it was transporting on June 1, 1935. *If the plaintiff's predecessor was engaged in the bona fide transportation of merchandise generally at the grandfather date and this transportation was carried on by the plaintiff thereafter, a certificate of public convenience and necessity should have been granted by the Commission.* * * *
>
> The question therefore becomes one of fact and we may not overrule the Commission's findings in this connection unless we find them to be arbitrary or capricious or not supported by substantial evidence.
>
> *Examination shows that a substantial part of the record which was before the Commission is not before this court.* (Emphasis ours)

We wholeheartedly concur in the above-quoted portions of the decision. We ask only that what was there said be applied to the facts of the instant case, for, in the language of the District Court, appellee's predecessor was engaged

in the bona fide transportation of merchandise generally at the "grandfather" date, this transportation was carried on by appellee thereafter, and a certificate of public convenience and necessity to continue that transportation should have been granted by the Commission.

It is true that the District Court went on to say that a tabulation of record led to the conclusion that the transportation of general merchandise by the plaintiff and its predecessor was sporadic and entirely incidental to its chief business, but we are still quite unable to find any similarity between the facts thought to support that dictum (we say "dictum" because the entire record was not before the District Court and it could not logically assess the weight of that record) and the facts in the case here at bar. No unprejudiced person could for a moment believe that the carriage of the many commodities omitted from the Commission's findings in the instant case was incidental to this appellee's business, and certainly the carriage of those commodities was no more incidental than the carriage of commodities which the Commission did authorize, such, for example, as canned goods from Baltimore, Md., to Shelby, N. C., beer from Newark, N. J., to Wadesboro, N. C., and linoleum from Marcus Hook, Pa., to Spartanburg, S. C.

The McDonald Case is Not in Point.

At pages 25 and 26 of its brief the Government looks to *McDonald* v. *Thompson*, 305 U. S. 263, for support for its position that "the true criterion is whether an applicant has in substance *actually* been engaged in carrying general freight throughout the territory specified" and that that standard "requires that general transportation and service have been in fact performed as the stable and distinguishing feature of the applicant's business." But the cited case is clearly not even remotely in point here. The petitioner in that case had operated in open defiance of the State laws of Texas, and the decision turned wholly on the question whether, despite such open defiance, the opera-

tions were bona fide within the meaning of the "grandfather" clause. That this is a correct analysis is plain from beginning to end of the decision, but for the convenience of the Court we quote the following from pages 266 and 267:

> Plainly the proviso [the "grandfather" clause] does not extend to one operating as a common carrier on public highways of a State in defiance of its laws.
>
> As petitioner is not protected in its operation as a common carrier by the proviso, we need not consider to what extent, if at all, the the federal Motor Carrier Act superseded the state motor truck law, *or any other question presented by petitioner.* (Emphasis ours)

The Government, however, at page 26 of its brief, quotes the following language from the opinion of the Court:

> • • • The expression, "in bona fide operation," suggests absence of evasion, *excludes the idea that mere ability to serve as a common carrier is enough, includes actual rather than potential or simulated service,* and in context implies recognition of the power of the State to withhold or condition the use of its highways in the business of transportation for hire. • • • (Italics supplied by the Government.)

This language it ostensibly accepts as the equivalent of a finding that this appellee may not be authorized to transport general commodities within the territory which it has so long occupied. From which particular part of this excerpt it draws comfort we cannot say, for there is nothing therein which weakens our position in the slighest. In the instant case, as in the standard established by this Court in the cited case, we have a complete absence of evasion and we have a coincidence of ability to serve as a common carrier and actual rather than potential or simulated service. Thus appellee's operations fall squarely within the descriptive matter which the Government has selected from the decision of the Court. We cannot believe that the Government will seriously urge that this appellee ever attempted to operate by stealth or artifice or that its service has been merely potential or feigned.

The Lower Court Did Not Substitute Its Judgment for that of the Commission on the Weight of the Evidence.

The Commission, at pages 15 and 38-46 of its brief, charges the lower court with trenching upon the administrative functions of the Commission. In this the Commission clearly errs. This is best shown perhaps by the fact that the court below did not attempt to define the precise limitations of the certificate to which appellee might be entitled, but ordered the cause remanded "to the end that the Commission may pass upon the application of plaintiff in the light of the principles herein set forth." It specifically stated that this did not mean that appellee was necessarily entitled to the certificate applied for, but that "the Commission should pass upon the application in the light of the principles here laid down, and without the limitations which we have condemned."

The whole opinion of the court below demonstrates that it did not, as the Commission charges, assume to weigh the evidence. To the contrary, it did not go beyond the question of the construction to be placed upon the statute. Having found that the clear meaning of section 206(a) is to ensure to common carriers in business on June 1, 1935, and since, the right to continue to occupy the same field which they had theretofore occupied, having found that "There is nothing in the language or in the reason and spirit of the Act which justifies the limiting of certificates granted common carriers under the grandfather clause to the precise commodities which they have theretofore hauled or in the case of carriers by irregular routes to the precise points that they have served in the territory over which they have operated," and having found that the Commission, by drawing an unwarranted distinction between common carriers by regular and those by irregular routes, had added to the statute in favor of one class of carriers and against another, the court went no farther than to order the cause remanded. Here, of course, it had no alternative, since the limitations imposed by the Commission flew in the very face of the compelled

construction of the statute and were therefore so arbitrary and unreasonable as to transcend the Commission's power. A vast number of precedents could be cited in support of the proposition that orders of the Commission must be set aside if they are the result of giving to the statute a meaning different from that plainly intended by the Congress. *United States* v. *Pennsylvania R. Co.*, 242 U. S. 208; *Baltimore & O. R. Co.* v. *United States*, 277 U. S. 291; *Interstate Com. Com.* v. *Oregon-Wash. R. & Nav. Co.*, 288 U. S. 14.

CONCLUSION.

We are firmly convinced that the conclusions of the Commission stem from a mistaken construction of the "grandfather" clause and of section 203(a)(14) and that because of that mistaken construction the Commission has arbitrarily disregarded evidence which ought to have been considered and has considered other facts and circumstances, not of record, which should never have been injected into the proceeding. For these reasons appellee respectfully submits that the decree of the District Court is wholly sound and should therefore be affirmed.

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January 6, 1942.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing brief upon all parties of record by mailing a copy thereof, properly addressed with postage prepaid, to each of said parties.

Dated at Washington, D. C., this sixth day of January, A. D. 1942.

WILMER A. HILL,
For appellee.

APPENDIX.

Pertinent Portions of Section 216 of Part II of the Interstate Commerce Act.

(b) It shall be the duty of every common carrier of property by motor vehicle to * * * establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(e) * * * Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective * * *.

(g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to en-

ter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, for a period of ninety days and if the proceeding has not been concluded and a final order made within such period the Commission may, from time to time, extend the period of suspension by order, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 197

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellants.

vs.

CAROLINA FREIGHT CARRIERS CORPORATION,
Appellee.

BRIEF IN BEHALF OF THE IRREGULAR ROUTE COMMON CARRIER CONFERENCE OF THE AMERICAN TRUCKING ASSNS., INC.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

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INDEX.

	PAGE
Foreword	1
Questions Presented	2
Statutes Involved	4
Statement	4
1. The report of the Commission	4
2. The nature of the evidence	8
3. Proceedings in court below	11
Summary of Argument	13
Argument	17
I. The questions presented are legal questions and do not require the Court to weigh the evidence	17
1. The function of the Commission in this case is limited by the statute	17
2. Judicial review is required where the Commission misconstrues the statute	18
II. The report of the Commission is devoid of preliminary findings of fact sufficient to support the final conclusion	22
III. There is no evidence to support a finding that the service actually rendered on and since the statutory date fixed or fixes the precise limits of the undertaking of the appellee as a common carrier within the territory on June 1, 1935, and since	24

PAGE

IV. The criteria used by the Commission to determine the bona fide operations of the appellee as a common carrier over irregular routes in the territory which it held itself out to serve, are not warranted by the Motor Carrier Act, 1935 24

1. The criteria used by the Commission 24

2. The Commission erroneously considers the same criteria appropriate for a common carrier as for a contract carrier .. 26

3. The Commission erroneously applies different criteria to an irregular route than to a regular route common carrier 27

4. The statute should have been construed according to the common law meaning of the technical terms used therein 29

a. The common law meaning of "common carrier" 30

b. The qualifying words in Section 206(a) do not limit the term, "common carrier", in the manner construed by the Commission 35

V. The Loving case is not decisive of the questions involved in this case 38

Conclusion 41

Table of Cases.

	PAGE
Alton R. R. v. United States, No. 110, this term	15, 25, 37
Ann Arbor R. Co. v. United States, 281 U. S. 658	21
Baltimore & Ohio R. Co. v. United States, 277 U. S. 291	19
Bornstein Contract Carrier Application, 2 M. C. C. 95	27
Brimstone R. & C. Co. v. United States, 276 U. S. 104	20
Carroll Contract Carrier Application, 1 M. C. C. 788	27
George Cassens & Sons Common Carrier Application, 1 M. C. C. 771	36
Central Railroad Co. of New Jersey v. United States, 257 U. S. 247	20
Cumberland Telephone & Telegraph Co. v. Kelly, 160 Fed. 316	30
Dixie Ohio Exp. Co., Common Carrier Application, 17 M. C. C. 735	27
Dwight v. Brewster, 1 Pick. 50	30, 31, 32
Fish v. Chapman, 2 Ga. 349, 46 Am. Dec. 393	31
Fleming Common Carrier Application, 8 M. C. C. 469	25, 37
Florida E. C. R. Co. v. United States, 234 U. S. 167	19
Florida v. United States, 282 U. S. 194	19
Fuller v. Bradley, 25 Pa. (1 Casey) 120	32
Gisbourn v. Hurst, 1 Salk. 249	30
Gordon v. Hutchinson, 1 Watts & Serg. 285	30
Gray v. Powell, No. 18, this Term, decided December 15, 1941	21
Henry v. United States, 251 U. S. 393	30
Honeyman v. Oregon & California R. R. Co., 13 Oreg. 352, 57 Am. Rep. 20	34
Interstate Commerce Com. v. Northern P. R. Co., 216 U. S. 538	19
Interstate Commerce Commission v. Oregon-Wash. R. & Nav. Co., 288 U. S. 14	19

PAGE

Kelly Common Carrier Application, 3 M. C. C. 79 . . . 27
Louisville & Nashville R. Co. v. Behlmer, 175 U. S. 648 . . . 20
Loving v. United States, 310 U. S. 609 . . . 16, 38
Loving Common Carrier Application, 12 M. C. C. 571 . . . 38, 40
McDonald v. Thompson, 305 U. S. 263 . . . 35
N. Y. C. R. Co. v. Lockwood, 17 Wall. (U. S.) 357 . . . 31
Pennewill v. Cullen, 5 Harr. (Del.) 238 . . . 33
Piedmont Mfg. Co. v. Columbia & G. R. R. Co., 19 S. C. Rep. 353, 16 Am. & Eng. R. Cases 194 . . . 31
Powell v. Mills, 30 Miss. 231, 64 Am. Dec. 158 . . . 34
Reliance Trucking Co., Inc., Contract Carrier Application, 4 M. C. C. 594 . . . 25
Shelden v. Robinson, 7 N. H. 157, 26 Am. Dec. 726 . . . 32
Southern P. Co. v. Interstate Commerce Commission, 219 U. S. 433 . . . 20
St. Louis & O'Fallon R. Co. v. United States, 279 U. S. 461 . . . 20
The Citizens' Bank v. The Nantucket Steamboat Company, 2 Story (U. S.) 16 . . . 34
Texas & P. R. Co. v. United States, 289 U. S. 627 . . . 20
Tunnel & Short v. Pettijohn, 2 Harr. (Del.) 48 . . . 34
United States v. Chicago, M., St. P. R. R. Co., 294 U. S. 499 . . . 18
United States v. Missouri P. R. Co., 278 U. S. 269 . . . 21
United States v. New York Central R. Co., 263 U. S. 603 . . . 21
United States v. Pennsylvania R. Co., 242 U. S. 208 . . . 19
Verner v. Sweitzer, 32 Pa. (8 Casey) 208 . . . 33

Texts.

PAGE

Hutchinson on Carriers (3rd Edition), Section 47, page 41 30

Dobie on Bailments and Carriers, pp. 301, 303..... 30

Van Zile on Bailments and Carriers (2nd Edition), Section 405, pp. 400-401..... 30

25 Ruling Case Law, pp. 1053-1054..... 30

Statutes.

Interstate Commerce Act, Part I:

Section 1(1)(a) 29

Section 1(21) 19

Section 15(1) 19

Interstate Commerce Act, Part II:

Section 203(a)(14) 12, 29

Section 206(a) 3, 6, 17, 23, 26, 27, 35, 39

Section 209(a) 6, 26

Interstate Commerce Act, Part III:

Section 302(d)—(Transp. Act of 1940, 54 Stat. 898) 29

Hoch Smith Resolution (U. S. C., Title 49, Sec. 55).. 21

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BRIEF IN BEHALF OF THE IRREGULAR ROUTE COMMON CARRIER CONFERENCE OF THE AMERICAN TRUCKING ASSNS., INC.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

Foreword.

Undersigned counsel present this brief as *amici curiae* in the interest of the Irregular Route Common Carrier Conference of the American Trucking Assns., Inc. That Conference is composed of a large number of common carriers by motor vehicle engaged in the transportation

of general commodities over irregular routes.[1] Many of its members have pending before the Interstate Commerce Commission applications under the "grandfather" clause similar to that of appellee. Consequently, the Conference is vitally interested in the questions of statutory construction and application involved in this case, although not in the precise scope of the certificate to which appellee may be entitled.

QUESTIONS PRESENTED.

The briefs of neither the Government nor of the Commission state with accuracy and completeness the underlying questions on which must turn the validity of the Commission's order. The brief of the Commission states the questions presented as if they involved nothing more than the existence of substantial evidence. (Com. Br. pp. 2-4) The brief of the Government states the questions presented as if restricted to the disregard by the Commission of the evidence relating to appellee's holding itself out as a common carrier of general freight throughout a territory along the Atlantic seaboard. (Gov. Br. p. 2)

There is, however, no need for the Court to examine the evidence before the Commission, except as may be necessary to illuminate the real questions in the case which are purely questions of law. The actual questions presented are:

---

[1] "Many operators, particularly common carriers, have regular routes, but many more do not, and there are **thousands** who go **anywhere** for hire, at least **within a specified territory** • • •" Fourth Report, Federal Coordinator of Transportation (House Doc. 394, 74 Cong., 2d Sess., January 21, 1936, pp. 26-27); (emphasis ours).

1. Does the report contain preliminary findings to support the final conclusion of the Commission which limits the future business of appellee to much less than the operations conducted on and since the "grandfather" date in the natural and normal course of business consistent with appellee's[2] holding out.

2. Is there *any* evidence to support a finding that the service actually rendered on the statutory date fixed the precise limits of the undertaking of the appellee as a common carrier.

3. Does the statute authorize the Commission to disregard the general character and type of business carried on by appellee on June 1, 1935, and to limit the scope of a certificate sought under the "grandfather" clause of Section 206 (a) of the Motor Carrier Act, 1935 (U. S. C. Supp. V, Title 49, Sec. 306(a)), to the precise points actually served on and since June 1, 1935, and, as to each such point, to the precise commodities transported therefrom or thereto in the same period. A subordinate question here is as to whether or not Congress intended to give the accepted meaning of the common law to the term "bona fide operations as a common carrier," as used in Section 206 (a) of the Motor Carrier Act, 1935.

4. Does the statute authorize the Commission to apply a different test in determining the extent of the bona fide operations of a common carrier over irregular routes within a territory than it applies in determining the extent of the bona fide operations of a common carrier operating between fixed termini over regular routes.

---

[2] When referring to the "grandfather" date, we use the term "appellee" as including its predecessors in interest.

STATUTES INVOLVED.

The relevant provisions of Motor Carrier Act, 1935, in effect on the date of the Commission's order, July 10, 1940, and as amended by the Transportation Act, 1940, are set forth in the Appendix, *infra*, pp. 43-47.

STATEMENT.

We offer our own statement of the case to separate the facts which are directly material to the questions presented from the facts which constitute only descriptive background. In the latter category fall facts which relate to the routine of the proceedings and to findings made by the Commission which bear upon the issues presented only indirectly. These are fully covered in the briefs of the appellants and will not be repeated.

The facts which are to be considered in determining whether or not the Commission acted beyond the authority conferred upon it by the statute are as follows:

1. *The report of the Commission.* The Commission notes (R. 10) the contention of appellee that prior to June 1, 1935, and since, it has held itself out to the general public to transport general commodities throughout a strip of territory along the Atlantic seaboard extending between North Carolina on the south and the New England states on the north. (The proof on which this contention rests is found at R. 44, T. 86; R. 60, T. 114; R. 77-81, T. 145-152; R. 82-83, T. 155; R. 84, T. 158; R. 94, T. 176; R. 98, T. 183; R. 127-139, T. 236-258.)[3] The

[3] To facilitate identification of evidence we give reference to both the pages of the printed transcript (R.) and to the pages of the original transcript (T.).

Commission makes *no* finding of fact in disposition of this contention, except as to the origin territory for cotton yarn (R. 9), although the Commission does find that appellee's operations were performed for the public generally and that it was and is a common carrier. (R. 8)[4]

Nor does the report contain *any* finding that the operations generally conducted throughout the territory *were or are inconsistent* with the holding out claimed by appellee. The only finding, either affirmative or negative, addressed to the matter of consistency between operations conducted and the holding out is an affirmative finding in the ninth paragraph of the report restricted to the origin territory for cotton yarn. (R. 9) The finding in the twelfth paragraph of the report (R. 10) "that no substantial showing of service has been made to establish bona fide irregular route operations in the transportation of general commodities from and to *all points* in the states included in the application," is not a finding directed to the consistency between operations conducted and the holding out, particularly as to general commodities to be transported to and from the general territory in the south and the general territory in the north between which the Commission does recognize appellee as a common carrier as to certain specified commodities.

In the twelfth paragraph of its report, the Commission finds in effect that to give effect to the contention of appellee as to its holding out would occasion congestion of highways, destructive rate practices, and unbridled competition, these being characterized as the ills which regulation was designed to alleviate. (R. 10) There was, however, not a syllable of evidence before the

[4] The printed transcript garbles the report of the Commission (24 M. C. C. 505), at this point.

Commission relating to such ills nor as to how the grant of the certificate sought to appellee would affect them.

In the same paragraph the Commission suggests that under the statute it should apply a different test in determining the bona fide operations as a common carrier of one operating over irregular routes than in the case of operating over regular routes. (R. 10)

In the thirteenth paragraph of its report, the Commission finds that Sections 206(a) and 209(a) should be construed as meaning that the undertaking of a common carrier within a territory should be considered as limited by the service actually rendered on and since the "grandfather" date. This legal principle, rather than the matter of substantial evidence or of the weight to be given to the evidence, controlled the ultimate conclusion of the Commission in which is specified the transportation services to which appellee will be limited in the future if the order stands.

The following summary of the authority granted in fourteenth paragraph of the report (R. 10-11), divided as between directions, indicates the nature of the business to which appellee will be confined if the order of the Commission is sustained.

Northbound: (1) Cotton yarn from twelve specified counties in North Carolina to all points in Pennsylvania on and east of highway U. S. 11, to all points in eight counties in northern New Jersey, and to four additional specified destinations in Maryland, New York, and Rhode Island (Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I.): (2) Asbestos textile products from Charlotte, N. C., to twelve specified destinations in Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts (Philadelphia and North

Wales, Pa., Trenton, Newark, Passaic and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket R. I., and Boston and Hudson, Mass.); (3) Empty spools and boxes from Charlotte, N. C., to two destinations in New Jersey (Harrison and Perth Amboy).

Southbound: (1) Supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J. to Charlotte, N. C.; (2) Petroleum products from Sewaren, N. J., and Marcus Hook, Pa., to all points in North Carolina, and to Columbia and Greenville, S. C.; (3) Linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to all points in North Carolina, and to Spartanburg and Greenville, S. C.; (4) Canned goods from Baltimore, Md., to Shelby, N. C.; (5) Beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C.; (6) Roofing and screen wire from York, Pa., to all points in North Carolina.

All authority granted is either to *or* from fixed termini (except that a part of the authority granted to transport yarn is described territorially for both origins and destinations) and in most cases is both to *and* from fixed termini. There is no evidence that appellee, in fact, operated to and from fixed termini.

In some cases the same fixed termini are authorized for more than one commodity; in other cases, the fixed termini differ as the commodities differ. This results in situations like these: Marcus Hook, Pa. is within the authorized destination territory for cotton yarn, but is not an authorized destination for asbestos textile products, although both commodities may start from the same origin in North Carolina and be transported in common carrier service in the same truck. Marcus Hook is an au-

thorized origin for southbound hauls of both petroleum products and linoleum and both may be loaded in the same truck. That truck is authorized to deliver both commodities at Greenville, S. C. However, if the same truck goes to Columbia, S. C. it must confine its deliveries to petroleum products while if it goes to Spartanburg, S. C. it must confine its deliveries to linoleum. At the same time, both commodities may be delivered without restriction to any destination in North Carolina.

As another result under the authority granted; a truck loaded with petroleum products from Sewaren, N. J., or loaded with roofing from York, Pa., may pass en route through Baltimore, Md., and deliver the load or any part thereof at *any* point in North Carolina. The same truck is authorized to pick up canned goods as additional lading at Baltimore. The canned goods, however, may be delivered only to one destination, Shelby, N. C., regardless of the fact that the same truck will be rendering a common carrier service as to other commodities to all destinations in North Carolina.

2. *The nature of the evidence.* Examples of appellee's actual operations and undertakings, as described in undisputed evidence before the Commission, are noted to illustrate the effect of the construction of the statute adopted by the Commission.

There is no evidence in the record that the appellee took any affirmative act to limit its service on and since the "grandfather" date to the transportation authorized in the report, unless the happenstance of appellee's inability to secure a haul of every commodity from and to every point in the territory constitutes evidence of such a limitation.

There is undisputed evidence that from 1931 to the date

of the hearing appellee conducted broad transportation services through a wide territory, rather than from and to fixed termini. This is found in part in the oral testimony of witnesses of the carrier and of shippers using the carriers' service who dealt with the solicitation of freight of all kinds throughout most of the territory embraced in the application. (R. 44, T. 86; R. 60, T. 114; R. 77-81, T. 145-152; R. 82-83, T. 155; R. 84, T. 158; R. 94, T. 176; R. 98, T. 183; 127-139, T. 236-258)

In addition, the whole record before the Commission is replete with illustrative descriptions of individual movements not noted in the Commission's findings.[5] These are found in the testimony of appellee's officers and drivers (R. 45-75, T. 88-141; R. 98-154, T. 184-286), and in the testimony of shippers who utilized appellee's service. (R. 43-45, T. 83-87; R. 75-98, T. 141-183) Much of this evidence is not reflected in any finding in the report, presumably because of the construction given by the Commission to Section 206(a).

To develop a representative example, we may analyze the southbound service from Baltimore, Md. The Commission limits that service for the future to the transportation of a single commodity, canned goods, to a single destination, Shelby, N. C., this on the ground that such was the limit of the actual service rendered to a substantial degree from Baltimore on and since the statutory date However, Exhibit 1 (R. 155-163, received in evidence R. 155) shows the following additional movements from Baltimore: Canned goods to Charlotte, N. C., in June, 1934, and on two different days in January, 1935; canned

[5] The Examiner of the Commission who presided at the hearing ruled at the very outset that no weight would be given to testimony describing services rendered according to states, and the witnesses were directed to confine themselves to individual points and individual commodities. (R. 56, T. 107)

goods to Gastonia, N. C., in May, 1934; medicine to Dallas, N. C., in June, 1934; wire and enamelware to Monroe, N. C., in May and June, 1934; plumbing supplies to Monroe, N. C., in October, 1934; canned goods to Charlotte and Lincolnton, N. C., in January, 1936; and canned goods to Gastonia, N. C., in February, 1936. Oral descriptions of additional transportation service southbound from Baltimore or destinations other than Shelby are found in the testimony of four different truck drivers employed by appellee or its predecessor. (R. 59, T. 112; R. 102, T. 191; R. 116, T. 216; R. 132, T. 245)

As another example: The certificate authorized would permit appellee to serve all of the state of Pennsylvania on and east of U. S. Highway 11 as a destination territory for cotton yarn on northbound hauls. For southbound commodities, from the same territory in Pennsylvania, the appellee would be limited to petroleum products and linoleum from Marcus Hook and to roofing and screen wire from York. Exhibit 1, just mentioned, shows that in the course of its operations appellee from time to time secured southbound loads from other origins in Pennsylvania as follows: Warp rolls and yarn on repeated occasions from Chester; cotton skeins from Allentown; oil from Oil City; rayon from Lewiston; machines, yarn, warps, merchandise, batteries, steel bars, and cones from Philadelphis; yarn from Pottstown; warps from Clifton Heights and batteries from Temple.

All of the foregoing origins lie within the territory to which the appellee is authorized to carry northbound shipments of cotton yarn. Having made a delivery in that territory, appellee, under the order, will not be permitted to pick up a return load therein at any point other than Marcus Hook or York despite the fact that its normal course of business has been otherwise.

The testimony of appellee's drivers and shippers above referenced shows that the type and character of business carried on by appellee on and since June 1, 1935, has followed the pattern of irregularity as to commodities and points within the territory. If we look at the whole, rather than the pieces, the traffic was substantial. A representative of a broker who solicited traffic for appellee stated that the traffic he personally handled amounted to "twenty loads a month up and back, that is from the two Carolinas up to eastern points and back to the Carolinas from the eastern points." (R. 141, T. 262) Shippers started using the service to a few points and from time to time increased the points within the same territory. (R. 83, T. 155; R. 84, T. 158). The presiding Examiner directed that the evidence offered be limited to a naming of specific points (R. 56, T. 183), but, as one shipper put it, "every week there were different shipping points". (R. 84, T. 158)

3. *Proceedings in the court below.* The briefs for appellants on occasion treat the opinion and findings of the court below as if no question of statutory construction were involved, and as if that court simply substituted its judgment for that of the Commission as to the conclusion to be drawn from the undisputed evidence. The opinion of that court and its findings of fact and of law show, however, that the lower court did not concern itself with what should be the precise limits of the certificate to be granted to appellee. Rather, the court confined itself to the matter of statutory construction and found that the intent of Section 206(a) was to permit a common carrier in business on the statutory date, and continuously since, to continue in the same type and kind of business (R. 29); that the statute cannot be construed as justifying the limiting of a certificate to the precise commodities theretofore

hauled and precise points theretofore served (R. 24, 29); that while a mere holding out is not enough, yet bona fide operations are proven by a showing of a substantial business transported within the territory as a common carrier (R. 30); that the definition of a common carrier contained in section 203(14) of the Motor Carrier Act, 1935, did not authorize the limitation imposed by the Commission (R. 30); that since, as a matter of law, appellee was a common carrier of general freight during the "grandfather" period, it became entitled to a certificate on the same basis (R. 31); that in the absence of statutory authority for the limitation imposed upon the Commission, its action in imposing such a limitation is so arbitrary and unreasonable as to transcend the Commission's power (R. 24, 33); that the limitation imposed by the Commission cannot be justified on the ground that it is based on a finding of fact by the Commission that the carrier in fact limited itself to the precise commodities transported and the precise points served, since such a finding is not supported by any evidence (R. 33); and that the Act did not authorize the Commission to make the distinction between common carriers by regular routes and those by irregular routes announced by the Commission in its report. (R. 33). In conclusion, the lower court specifically noted that it was not to be understood as saying that complainant is entitled to the certificate applied for. It confined its opinion and findings to principles of law to be observed by the Commission in further proceedings upon the case being remanded to it. (R. 34)

SUMMARY OF ARGUMENT.

I. While administrative agencies are entitled to wide latitude in determining matters committed to their care, they must proceed upon a proper construction of the authorizing statute. If it appears that the Commission misconstrued the statute, or failed to make necessary preliminary findings, or made findings wholly unsupported by evidence, applied different principles of law to those entitled to equality under the law, or based its conclusions on considerations so unrelated to the matter before it as in effect to deny a sensible exercise of judgment, the Commission committed an error of law which may be corrected by judicial review.

II. Appellee, in seeking a certificate, relied in part on proof that it held itself out to transport general commodities within a territory (not between fixed termini), and rendered services consistent with such a holding out. The ultimate conclusion of the Commission denying, except to a meagre extent, the operating authority applied for, is neither supported by a finding that there was, in fact, no such holding out, nor by a finding that the operations conducted in the transportation of general commodities within the territory where the Commission did recognize appellee as being a common carrier of specified commodities, were and are inconsistent with the holding out.

III. There is no evidence that appellee in fact restricted its undertaking to the precise towns and cities served with regularity on and since the "grandfather" date, and as to each set of such towns and cities, to the precise commodities actually transported in substantial volume therefrom and thereto.

IV. The Commission used two tests for determining the bona fide operations of appellee within the territory which are not warranted by the statute and are based on a misconstruction thereof. First, it used the test of regularity of operations, although the dominant characteristic of appellee's operations is irregularity. Consequently the Commission declined to consider the general type, character, nature and characteristics of the service, although the intent of Congress is that these very matters should govern. Secondly, the Commission used the test of points actually served and commodities actually carried, rejecting all other evidence as to the undertaking of the carrier although Congress intended that the technical terms of the statute be given their ordinary common law meaning. At the common law, the holding out or undertaking is the controlling test of a common carrier and of the extent of the common carrier services rendered by or claimed from him. According to correct legal principles one is a common carrier as to particular service if that service is within the carrier's undertaking regardless of whether or not the same service has been rendered with regularity. One may be a common carrier even though the precise services previously rendered within the undertaking have been irregular, few and infrequent. It requires affirmative action on the part of a carrier to limit his undertaking to particular commodities within the territory where he generally operates, and such a limitation is not to be inferred from the negative circumstance of inability to secure the transportation of a particular commodity in substantial volume.

This misconstruction by the Commission of the statute is in part due to a confusion on its part as between the criteria for determining the scope of the business of a contract or private carrier, on the one hand, and the

extent of the undertaking of a common carrier on the other.

In addition to applying erroneous criteria for determining the bona fide operations of the appellee within the territory, the Commission applied different criteria in the case of the appellee as an irregular route than in the case of a regular route common carrier. There is no warrant in the statute for such a differentiation.

The statutory qualification of the term "common carrier" by the phrase "bona fide operations of" does not support the construction of the statute on which the Commission proceeded in this case. As a matter of law, "operations" are coextensive with "undertaking". The adjective "bona fide" does no more than require that the operations be conducted in good faith. It further implies that a mere theoretical holding out is not sufficient. It does not, however, mean actual physical performance as to precise points and specific commodities, which is the narrow concept given by the Commission to the phrase. The fact that the controlling time is fixed as a single day, "on June 1, 1935", rather than a period of months or years plainly indicates that the extent of the transportation business of one applying for a certificate is not to be measured by actual physical performance as distinguished from the undertaking, viewing the latter from the standpoint of the shipping public and measuring it by the general type and character of business in which the carrier was known to be engaged.

In another case heretofore argued this term (*Alton R. R.* v. *United States*, No. 110), the Government and the Commission have urged upon this Court a construction of the statute wholly inconsistent with that adopted by the Commission in this case:

V. *Loving* v. *United States*, 310 U. S. 609, is not decisive of this case. In the first place, it is distinguishable on the facts. In the second place, the Commission did not there announce and follow the misconstruction of the statute here complained of. In the third place, that case did not involve the absence of necessary preliminary findings nor did it involve the error of law which flows from differentiating between irregular route and regular route carriers as to the criteria to be used in determining bona fide operations.

ARGUMENT.

I. THE QUESTIONS PRESENTED ARE LEGAL QUESTIONS AND DO NOT REQUIRE THE COURT TO WEIGH THE EVIDENCE.

We well appreciate the necessity for according administrative agencies wide freedom in administering the many matters of great public importance entrusted to their care. At the same time, administrative regulation must be in accord with the legislative intent as found in the statute granting the authority. Those whose property and fortunes are at the mercy of the administrative body are entitled to the protection of the judiciary in any case where, through mistake, or otherwise, the administrative body restrains a normal business activity otherwise than as intended by Congress. Unless an order of an administrative body is within the intent of Congress as to the scope of the authorized regulation, the statute is not applied in a just and reasoned manner. When an order is predicated on a misconstruction of the governing statute, the issuance of an injunction is not an unwarranted interference with administrative practices, but rather is as essential to the proper administration of regulatory laws as is a fair hearing.

1. The function of the Commission in this case is limited by the statute. The function of the Commission in this case was limited under Section 206(a) of the Motor Carrier Act, 1935, to determining what were, on June 1, 1935, and since, the bona fide operations of the appellee and its predecessors as a common carrier within the territory covered by the application. No questions of public policy, convenience and necessity, highway conges-

tion, or of unsatisfactory competitive or other conditions in the industry were involved. In rendering its decision the Commission was required to construe the statute as to what constituted "bona fide operations as a common carrier within the territory", to receive and consider all evidence relevant under the statute as properly construed and to exclude from its consideration any evidence not relevant thereunder, to make preliminary findings of fact as to all matters necessary to a decision, and to announce a conclusion responsive to the preliminary findings of fact so made.

If it here appears that the Commission gave a meaning to the statute different from that intended by Congress, or failed to make necessary and adequate preliminary findings of fact based on evidence relevant under the statute as properly construed, or made findings without any support in the evidence, or based its conclusions on considerations so unrelated to the matter before it as in effect to deny a sensible exercise of judgment, the Commission committed an error of law which may be corrected by judicial review.

2. *Judicial review is required where the Commission misconstrues the statute.* There are many cases in this Court in which orders of the Commission have been set aside because the administrative body committed errors of law of the character just described. Without going into detail, we note that such orders have been set aside in cases which, for convenience, may be grouped under the following categories of situations where—

(a) The report of the Commission did not contain preliminary findings on matters necessary to be determined as a support for the final conclusion, as in *United States v. Chicago, M., St. P. & P. R. R. Co.*, 294 U. S. 499, 504, in

which an order prohibiting reduction in rates on coal, because of a supposed disturbance of the general rate adjustment was enjoined, due to the absence of findings specifying the respects in which the proposed rate was unlawful; and as in *Florida* v. *United States*, 282 U. S. 194, 215, in which an order directed to intrastate rates was set aside because of the lack of findings of the basic or quasi-jurisdictional facts conditioning its power;

(b) The order was without any support in the evidence, as in *Florida E. C. R. Co.* v. *United States*, 234 U. S. 167, 186-188, in which an order requiring a reduction in rates was set aside as to a railroad because of lack of evidence pertaining to that particular carrier;

(c) The order of the Commission was the result of giving an erroneous meaning to the words of the statute, as in *United States* v. *Pennsylvania R. Co.*, 242 U. S. 208, 229, and *Baltimore & Ohio R. Co.* v. *United States*, 277 U. S. 291, 299-300, in which the Commission proceeded upon an erroneous construction of the word "practice", as found in Section 15(1) of the Interstate Commerce Act (U. S. C. Title 49, Section 15(1)); and as in *Interstate Commerce Commission* v. *Oregon-Wash. R. & Nav. Co.*, 288 U. S. 14, in which the order of the Commission proceeded upon an erroneous construction of the phrase "to extend its line" found in Section 1(21) of the Act. (U. S. C. Title 49, Section 1(21));

(d) The order of the Commission was predicated on an exercise of discretion not committed to the Commission by the statute, as in *Interstate Commerce Com.* v. *Northern P. R. Co.*, 216 U. S. 538, in which an order establishing through routes and joint rates was set aside on the ground that the matter was not one for the Commission's discretion where it was shown, according to proper legal

principles, that a reasonable and satisfactory through route existed;

(e) The order of the Commission was predicated on matters which the Commission could not lawfully use as a criterion for its action as in *Southern P. Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, in which an order of the Commission requiring a reduction in rates was set aside because predicated on economic instead of transportation facts and circumstances;

(f) The Commission excluded from consideration facts and circumstances which legally ought to have been considered under the statute as properly construed as in *Louisville & Nashville R. Co.* v. *Behlmer,* 175 U. S. 648, 669, in which the Court refused to enforce an order of the Commission entered under Section 4 of the statute because the Commission excluded from consideration facts relating to competition as between carriers; as in *Brimstone R. & C. Co.* v. *United States,* 276 U. S. 104, 117, where the order of the Commission fixing divisions of rates between connecting carriers was set aside because it had not given consideration to certain items required by the statute to be considered; and as in *St. Louis & O'Fallon R. Co.* v. *United States,* 279 U. S. 461, 487, where the order of the Commission entered under the recapture provisions of Section 15(a) was set aside on the ground that the Commission had failed to consider certain elements of value which the statute required to be considered;

(g) The Commission proceeded upon a broader construction of the statute than was warranted by its terms as in *Central Railroad Co. of New Jersey* v. *United States,* 257 U. S. 247, and *Texas & P. R. Co.* v. *United States,* 289 U. S. 627, in which orders of the Commission entered under Section 3 of the Act were set aside on the ground

that the circumstances relied upon as a predicate for a violation of that statute were in fact not embraced within the purview thereof; as in *United States* v. *New York Central R. Co.*, 263 U. S. 603, in which an order requiring railroads to issue interchangeable mileage coupon tickets was set aside on the ground that the Commission had given the statute a broader application than that to which it was entitled according to its terms; and as in *Ann Arbor R. Co.* v. *United States*, 281 U. S. 658, 665, 666, 668, in which an order of the Commission requiring a reduction in freight rates was set aside on the ground that the Commission had given the Hoch-Smith Resolution (U. S. C., Title 49, Section 55) a different meaning than that to which it was entitled; and

(h) The Commission misconstrued the statute by giving it a narrower application than if it had been properly construed, as in *United States* v. *Missouri P. R. Co.*, 278 U. S. 269, in which an order of the Commission establishing through rates which short hauled the Missouri Pacific Railroad was set aside because the Commission had misconstrued Section 15(4) (U. S. C., Title 49, Sec. 15(4)), of the Act as applicable only in favor of a carrier in possession of the property.

In *Gray* v. *Powell*, No. 18, this Term, decided December 15, 1941, this Court noted that the judgment of the administrative agency should be set aside if it considered the statute under which it operated as embracing circumstances so unrelated to the task entrusted by the Congress to the agency as in effect to deny a sensible exercise of judgment. In that case an order of the Bituminous Coal Division of the Department of the Interior was sustained, over the objection of the Seaboard Air Line Railway that it was, contrary to the finding of the administrative agency, a "producer-consumer" within the

meaning of a statutory exemption. However, in that case the terms of the statute were not technical terms or terms of art with an accepted legal meaning, well known to the Congress, at the time of the statutory enactment, while in this case the term to be construed is a technical term with a well defined legal meaning. Nor could it be said in that case, as it can be said here, that the administrative body specifically announced that evidence, relevant and controlling as a matter of law, would be given no weight. Nor could it be said in that case, as it can here, that the administrative body announced and followed a rule of using different criteria for determining statutory application, dependent on who was before it.

II. THE REPORT OF THE COMMISSION IS DEVOID OF PRELIMINARY FINDINGS OF FACT SUFFICIENT TO SUPPORT THE FINAL CONCLUSION.

In concluding its report, the Commission finds in the terms of the statute that appellee's predecessor in interest was on June 1, 1935, and continuously since it and its predecessor have been, in bona fide operation as a common carrier by motor vehicle in interstate commerce of twelve specified commodities, different points or territories of origin and destination being specified for each such commodity. (R. 10) As to transportation services beyond those authorized, the finding is "that the application in all other respects should be denied." (R. 10-11)

The negative finding last mentioned is not supported by preliminary findings of fact sufficient to disclose the basis of, and the reasoning upon which the Commission arrived at its conclusion.

There is a general finding in the report that appellee made no substantial showing of service to establish bona fide irregular route operations in the transportation of

general commodities from and to *all points* in the states included in the application. (R. 10) However, as is developed under Point IV, 3, of this argument, the Commission's views as to what constitutes substantial evidence were constrained by the erroneous construction which it gave to Section 206(a). Furthermore, the all-inclusive statement as to lack of evidence to *all points* hardly constitutes a predicate for withholding a certificate as to general commodities to and from the general territories, such as the state of North Carolina, on the south, and the state of Pennsylvania east of U. S. Highway No. 11, on the north, between which the Commission did recognize appellee as being in bona fide operation as a common carrier as to certain specific commodities.

The Commission makes no finding of fact to dispose of the appellee's contention regarding its broad holding out (R. 10), except to find as to a single commodity, cotton yarn, that the holding out extended to service from twelve counties in North Carolina, and that the appellee had conducted operations consistent with that holding out. (R. 9.)

The Commission may have been of the opinion that as to other features of the case appellee had failed to conduct an operation consistent with the holding out. The fact remains that it made no finding to that effect. In view of the contentions and proof of the appellee, such a finding is required to support the limitations imposed on the business of the appellee by the order here complained of, and without the support of such a finding the order is void and should be set aside.

III. THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE SERVICE ACTUALLY RENDERED ON AND SINCE THE STATUTORY DATE FIXES OR FIXED THE PRECISE LIMITS OF THE UNDERTAKING OF THE APPELLEE AS A COMMON CARRIER WITHIN THE TERRITORY ON JUNE 1, 1935, AND SINCE.

The finding of the Commission that the limits of the undertaking of the appellee as a common carrier are fixed by the service actually rendered was presumably intended to be a finding of law rather than of fact. However, if the contrary is argued, then we submit that there is no evidence of any sort to support such a finding. All the evidence points to the fact that neither in the "grandfather" period, nor since, has the appellee by any affirmative act of its own restricted its undertaking to the services shown to have been actually rendered.

IV. THE CRITERIA USED BY THE COMMISSION TO DETERMINE THE BONA FIDE OPERATIONS OF THE APPELLEE AS A COMMON CARRIER OVER IRREGULAR ROUTES IN THE TERRITORY WHICH IT HELD ITSELF OUT TO SERVE, ARE NOT WARRANTED BY THE MOTOR CARRIER ACT, 1935.

1. *The criteria used by the Commission.* The report of the Commission shows on its face that two different tests were used to determine the scope of the bona fide operations of the appellee on and since the "grandfather" date, and also shows that the Commission considered it had the right, as a matter of policy, to use a different test in the case of an irregular route, than in the case of a regular route operator.

The first test used was transportation with "a fair degree of regularity". That phrase was applied affirmatively to certain points and certain commodities. (R. 9) By inference, points not mentioned were served, and commodities not mentioned were hauled, without regularity. Irregularity, however, is the dominant character-

istic of the business in which appellee was and is engaged, and stamps it as a carrier of general commodities over irregular routes within a territory, rather than as a special hauler or as a carrier over regular routes between fixed termini.[6] In using irregularity of service as a reason for withholding operating authority, the Commission used a criterion which is not warranted by the statute and which, in truth, is in the teeth thereof. Congress unquestionably intended to grant legislative approval to a continuance of the same type and character of business as was honestly and openly conducted by any common carrier by motor vehicle on June 1, 1935.

In the foregoing we do not mean to characterize the business of appellee, when viewed in its entirety, as irregular. The whole operations were consistent and regular throughout the territory. The individual movements, however, were irregular as to routes used, towns served, and commodities carried. The Commission applied a legal principle which prevented it from seeing the forest because

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[6] In *Fleming Common Carrier Application*, 8 M. C. C. 469, the Commission granted a certificate to a carrier operating over irregular routes from Detroit to all points in a large number of states, although actual service was shown to but a few points in each state. In the course of its opinion, at page 473, the Commission said:

> "Clearly, we must take into consideration the nature or characteristics of a transportation service when issuing a certificate under section 206(a) of the act, the provisions of which require in substance that the authority granted shall permit a carrier to conduct the bona fide operations it was conducting on June 1, 1935," citing *Reliance Trucking Co., Inc., Contract Carrier Application*, 4 M. C. C. 594.

The validity of the order entered by the Commission in the *Fleming* case is before this Court in *Alton R. R.* v. *United States*, No. 110, this Term. In the brief filed jointly on behalf of the Government and the Commission in that case, it is argued that the Commission acted upon correct legal principles in granting Fleming the certificate sought.

of the trees. Viewed in proper perspective, the operations were neither intermittent nor sporadic.

Not content with resting its limiting conclusion, which virtually amounts to a death sentence, on the very characteristic which gave appellee life in the "grandfather" period, the Commission would further limit appellee's struggle for survival to the precise service rendered in substantial volume on and since June 1, 1935. This is the second test, and when applied the Commission treats the undertaking of the carrier, as distinguished from its actual performance, as without the slightest materiality. This treatment, the Commission says, is in accord with its construction of Section 206(a) and 209(a). According to the Commission's construction, these sections defined the undertaking of a common or contract carrier as though affirmatively limited to the precise services, both as to commodities and points, actually performed on and since the "grandfather" dates. We show below that such a construction is contrary to all accepted legal concepts as to the extent and scope of the operations in which a **common** carrier is engaged.

2. *The Commission erroneously considers the same criteria appropriate for a* COMMON *carrier as for a* CONTRACT *carrier.* The Commission may be and probably is right in its construction of Section 209(a) which relates to permits to be accorded contract carriers. A contract carrier is a private carrier. He does not undertake to do more than agreed to in individual agreements and he has no undertaking until after such a special contract is entered into. He has no relation to the general public. So in Section 209(b) of the Act, the Commission is authorized in the case of a contract carrier permit, "grandfather" or otherwise, to specify "the business of the contract carrier covered thereby and the scope thereof."

Such specification in a "grandfather" permit may be limited lawfully to actual operations as of the "grandfather" date since there is no theory of law on which the contract carrier could claim he was engaged in any broader operations than actually conducted. In the case of a common carrier, Section 208(a) of the Motor Carrier Act, 1935, is different and authorizes the Commission to "specify the service to be rendered * * * and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate;". In a well considered report, *Dixie Ohio Exp. Co., Common Carrier Application,* 17 M. C. C. 735, 744-745, the Commission held that the section last quoted did not require it to specify in a common carrier certificate the exact commodities to be transported unless there is *evidence* that the undertaking of the carrier was so restricted.

In proceeding in this case on the legal theory, which is plainly erroneous, that a common carrier and a contract carrier are alike as to the circumstances which define the scope of their respective businesses, operations, or undertakings, the Commission has committed the same error of law as is reflected in its reasoning in other cases. See *Bornstein* CONTRACT *Carrier Application* 2 M. C. C. 95, 96-97; and also *Kelly* COMMON *Carrier Application,* 3 M. C. C. 79, 81, the latter citing as authority *Carroll* CONTRACT *Carrier Application,* 1 M. C. C. 788.

3. *The Commission erroneously applies different criteria to an* irregular *route than to a* regular *route common carrier.* The construction given Section 206(a) in this case, which impels the Commission to reject all evidence as to the scope of the common carrier undertaking of appellee, other than as to actual physical perform-

ance, is admittedly not followed in the case of a common carrier over regular routes between fixed termini. The reason for this distinction is stated thus in the report (R. 10):

> "To do otherwise would create the very ills which regulation is designed to alleviate, namely, congestion of highways, destructive rate practices and unbridled competition. Common carriers which are expected to maintain regular service for the movement of freight in whatever quantity offered to and from all points on a specified route, cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular route service."

Appellant may say that the finding just quoted has reference only to the granting of a certificate without substantial evidence, which is the subject of the preceding sentence, and appellants may say that the requirement of substantial evidence is applied alike to irregular route and to regular route operators. Admittedly, the direct reference is to the need for substantial evidence. However, the context makes it plain that the Commission construed the statute when applied to appellee, an irregular route carrier, as authorizing it to treat as without substance all evidence other than as to *actual* operations conducted with continuous *regularity* both as to points served and commodities carried. To stress the words "substantial evidence" while ignoring the context in which found, and to urge that the lower court simply substituted its judgment for that of the Commission as to a question of fact, simply begs the question and ignores the *legal premises* on which the Commission predicated its finding as to what constitutes the substantial evidence required to justify a certificate.

We earnestly bespeak a fair consideration by this Court

of the propriety of those legal principles, since the fortunes of thousands of motor carriers operating over irregular routes depend on the Commission proceeding according to law. In saying this we are in full agreement with appellants that hardship to appellee is not a ground for setting the order aside if the Commission did construe and apply the statute according to correct legal principles.

4. *The statute should have been construed according to the common law meaning of the technical terms used therein.* The words in the "grandfather clause" of Section 206(a) which require construction are: "bona fide operation as a common carrier by motor vehicle on June 1, 1935, * * * within the territory for which application is made." Section 203(a)(14), as in effect on the date of the Commission's order herein, defines a common carrier by motor vehicle as "any person who or which undertakes * * * to transport * * * property, or any class of property, for the general public."[7] (U. S. C., Supp. V, Title 49, Section 303(a)(14).)

This case does not turn on whether or not appellee had and has the status required by the "grandfather" clause to the full extent claimed in its application. It is sufficient to demonstrate an error of law in the report if it appears

[7] Compare the phraseology used in the three parts of the Interstate Commerce Act in defining a common carrier subject thereto. Section 1(1)(a) of Part I, relating to railroads, uses the phrase "engaged in the transportation." (U. S. C., Title 49, Section 1(1)(a).) Section 302(d) of Part III, relating to water carriers, uses the phrase "holds itself out to the general public to engage in the transportation. (Transportation Act of 1940, 54 Stat. 898, 929, approved September 18, 1940.) Subsequent to the time this case was decided (July 10, 1940), Section 203(a)(14) of Part II, relating to motor carriers, was amended by the Transportation Act of 1940, so as to use the same phraseology as is found in Section 302(d) of Part III.

that the appellee had the status of a common carrier on the "grandfather" date and since beyond the limits imposed by the Commission.

The phrase "common carrier" is a technical term. It has been repeatedly defined by the courts and the extent of the undertaking, as distinguished from actual physical performance, has been universally held to be the touchstone by which to determine status. It must be assumed that Congress used the term in its common law meaning, unless it plainly appears from the statute itself that Congress intended otherwise. *Henry* v. *United States,* 251 U. S. 393, 395; *Cumberland Telephone & Telegraph Co.* v. *Kelly,* 160 Fed. 316, 321; 25 R. C. L. pp. 1053-1054.

a. *The common law meaning of "common carrier."* Gibson, C. J., in *Gordon* v. *Hutchinson,* 1 Watts & Serg. 285, characterized the following from *Gisbourn* v. *Hurst,* 1 Salk. 249, as the best definition of a common carrier known to him: "Any man undertaking for hire to carry goods of all persons indifferently."

The definition of a common carrier most frequently cited is that of Parker, C. J., in the case of *Dwight* v. *Brewster,* 1 Pick. 50, 53 (1822): "A common carrier is one who undertakes, for hire or reward, to transport the goods of such as choose to employ him, from place to place."

All text writers insist that the primary test of a common carrier is his holding out, that is, the undertaking to carry generally and indifferently for the public. *Hutchinson on Carriers* (3rd Edition), Section 47, p. 41; *Dobie on Bailments and Carriers,* pp. 301, 303; *Van Zile on Bailments and Carriers* (2nd Edition), Section 406, pp. 400-401.

It is often said that the test of the extent holding out

is determined by whether or not the carrier would be liable in an action if he refused, without some just ground, to transport for his reasonable and customary price. *Fish* v. *Chapman*, 2 Ga. 349, 46 Am. Dec. 393; *Piedmont Mfg. Co.* v. *Columbia & G. R. R. Co.*, 19 S. C. Rep. 353, 364, 16 Am. & Eng. R. Cases, 194, 202. In considering this test, it is important to note that if a carrier is requested to transport within the limits of his undertaking, he cannot legally divest himself of his common carrier status and by special agreement become a private carrier. *N. Y. C. R. Co.* v. *Lockwood*, 17 Wall. (U. S.) 357, 376-377.

If a particular service is within the holding out or undertaking of the carrier, he is a common carrier as to that service, regardless of whether or not precisely the same service has been rendered on previous occasions and regardless of the fact that the particular service is not the carrier's principal service or business. In *Dwight* v. *Brewster, supra*, the question was as to whether a stagecoach operator was a common carrier in the transportation of a package of bank notes from Northampton to Springfield. The usual business of the stagecoach was to carry mail and passengers. It had a mail contract and Springfield was not on the contract route, although the court noted that the coach "usually went that way." The evidence showed that the coach operator, as a matter of usual practice, did carry packages for hire, although the opinion does not identify precise origins and destinations. Under the circumstances, the stagecoach was held to be a common carrier of packages of bank notes, Parker, C. J., saying (italics ours):

> "That the principal business was to carry the mail and passengers, is no reason why the proprietors should not be common carriers of merchandise, &c.

> A common carrier is one who undertakes, for hire or reward, to transport the goods of such as choose to employ him, from place to place. This may be carried on at the same time with other business. The instruction of the judge in this particular, that the *practice of taking parcels* for hire to, be conveyed in the stagecoach, constituted the defendants common carriers, we think, was right."

In the above case, the general practice as to parcels, plus the fact that the coach ordinarily went by the destination, was sufficient to make the defendant a common carrier, even though its general business was to carry mail and passengers and there was no showing that bank notes had ever been carried to Springfield prior to the shipment out of which the case arose.

In the present case appellee's trucks usually went via Baltimore with a great variety of commodities but, in defiance of correct legal principles, the Commission considered appellee to be a common carrier from Baltimore only as to canned goods.

In *Shelden* v. *Robinson*, 7 N. H. 157, 26 Am. Dec. 726 (1834), the driver of a stagecoach was held *not* to be a common carrier under facts almost identical with those in *Dwight* v. *Brewster*, except for the single differentiating fact that in the *Shelden case* there was no holding out.

It is an accepted legal principle that one may be a common carrier, even though the precise services previously rendered within the undertaking have been few and infrequent. In *Fuller* v. *Bradley*, 25 Pa. (1 Casey) 120 (1855), the Supreme Court of Pennsylvania sustained a charge to the jury in which the lower court said:

> "Though the number of instances employed in carrying may be evidence of the character of a common

> carrier, it is not the rule which constitutes it. The law has no fixed number of instances which shall stamp him with the character. If he holds himself forth to the public to carry for hire, he is a common carrier as much in his first trip as in his second, third, or fourth."

In *Verner* v. *Sweitzer,* 32 Pa. (8 Casey) 208, 212 (1858), the same court said:

> "The readiness to carry for all who will employ gives the character to the bailment rather than the extent of his business, or the number of trips performed."

In *Pennewill* v. *Cullen,* 5 Harr. (Del.) 238, 241, a vessel owner was sued as a common carrier by reason of damage to grain in the course of being transported by him from Dover to New York City. It appeared that the usual business of the vessel owner was to transport under contract coal from Philadelphia to New York, returning with lime to Little Neck. It further appeared that on one occasion the vessel had transported grain to New York, although from Little Neck and not from Dover. The vessel owner was held liable as a common carrier, the court saying (italics ours):

> "The jury will decide upon the proof, whether the defendant held himself out to the public as engaged in the business of a common carrier. It is not necessary that his trips should be regular between the same points or places. If engaged in the business of carrying grain for others *generally* to and from *any* point, he is liable as a common carrier."

The law does recognize that one may be a common carrier of certain commodities and not of other commodities. In all such cases, however, the limitation was made known to the public and was not merely inferred

from an infrequency of service. See *Tunnel & Short* v. *Pettijohn*, 2 Harr. (Del.) 48, in which the limitation was based on a general usage not to carry packages of unusual bulk and weight; *The Citizens' Bank* v. *The Nantucket Steamboat Company*, 2 Story (U. S.) 16, 32-35 (1841), in which the limitation was referred to as "known and avowed"; *Powell* v. *Mills*, 30 Miss. 231, 64 Am. Dec. 158 (1855), in which the general course of business of the carrier was relied upon as determining his status; and *Honeyman* v. *Oregon & California R. R. Co.*, 13 Oreg. 352, 57 Am. Rep. 20 (1886), in which the carrier had definitely refused to extend its undertaking to the particular commodity.

If the Commission had applied the legal principles above summarized to the undisputed facts, it would have found that the defendant was a common carrier on and since June 1, 1935, to a greater extent than is reflected in its report and order. There is no doubt but that it was appellee's general practice to take any commodity which could be secured from any origin to any destination throughout the territory in which its vehicles operated. There is no doubt but that appellee's vehicles were in constant operation between the entire state of North Carolina, on the south, and a broad northern territory which certainly included eastern Pennsylvania and northern New Jersey, on the north, since all of these territories are within the authority granted as to some of the commodities specified by the Commission. It cannot be reasoned that the appellee would have been sustained in a common law action if it had contended that its undertaking did not extend to the transportation of general commodities between such territories, or if it had contended that it was a private carrier as to some commodities, such as those handled infrequently, and a com-

mon carrier only as to commodities handled in substantial volume. Yet, if the Commission proceeded upon correct legal principles, appellee could have done just that.

b. *The qualifying words in Section 206(a) do not limit the term "common carrier" in the manner construed by the Commission.* When Congress qualified the term "common carrier" in Section 206(a) by the phrase "bona fide operations of", it did not intend to authorize the Commission to disregard the general undertaking of the carrier.

The "operations" of a carrier are co-extensive with its "undertaking." "To operate" a transportation service, is synonymous with "to engage" in the service, and both of these mean the same as "to undertake to transport".

The term "bona fide" has the primary meaning of "in good faith", and is directed to the matter of intent rather than physical performance, and it was so considered by this Court in *McDonald* v. *Thompson*, 305 U. S. 263, 266. In that case it was said that the phrase "bona fide" not only suggests absence of evasion, but also includes "actual rather than potential or simulated service." Read in its context, the reference to "actual" indicates the line to be drawn between a theoretical holding out, unaccompanied by a service which, if rendered, would have been in defiance of state laws, and a service honestly and openly rendered in compliance with state statutes.

If Congress had intended "bona fide" to have the concept of "actual" given to it by the Commission in this case, it would have used the English word rather than the Latin phrase.

The fact that the controlling time is a single day, "on June 1, 1935," rather than a period of months or years,

is of direct significance. The purpose of the "grandfather" clause is to authorize the continuance of any motor carrier business honestly and openly conducted on that date. If "bona fide operations" be read as "actual service performed on June 1, 1935," the purpose of Congress could not be achieved. To carry out its purpose, "bona fide" must be read as meaning not only the service actually performed on that one day, but, in addition, all services which the public reasonably considered as being included within the carrier's undertaking on that day. This in turn means that full effect must be given to the carrier's holding out as evidenced by its solicitation and by the type and character of operations conducted in the usual and normal course of business during a considerable period both before and after January 1, 1935.

In other cases, the Commission has given effect to the reasoning just advanced, saying in *George Cassens & Sons Common Carrier Application*, 1 M. C. C. 771, 774:

> "It obviously was not the intent of the Congress that a carrier must have been in physical operation to all points to which such carrier claims to have rendered service, on the exact date specified in the statute. It is apparent that if such were the intent and purpose of the 'grandfather' clause provision, the effect would be to destroy the business of many small irregular operators, who may not actually have been in physical operation to all points in the territory claimed on the statutory date, but who did serve a great number of points therein within a reasonable time before and subsequent to that date. A more appropriate view of the application of the 'grandfather' clause date in such cases is that a carrier is entitled thereunder to claim the territory or the points which it might reasonably have served by reason of its operations prior to, as well as on, the statutory date, and subsequent thereto. In other words, the question in such cases is: What was the extent of the transportation business honestly and openly carried on by the carrier as of that date?"

See also *Fleming Common Carrier Application*, 8 M. C. C. 469, in which an order of the Commission granting broad territorial rights was predicated on the undertaking or holding out of the carrier on the statutory date.[8]

If the Commission had applied in this case the legal principles which it followed in the *George Cassens* case and in the *Fleming case*, it would have correctly construed

[8] The validity of the order of the Commission in the Fleming case is before this Court in *Alton R. R.* v. *United States*, No. 110, this Term. The appellant in that case contends that Section 206(a) was intended to limit carriers operating over irregular routes "to their actual operations, the precise territory they were serving during the 'grandfather' period." (Br. 47) The Government and the Commission have submitted an argument to this Court in No. 110 which is opposed to the contention of appellants in that case and which is wholly inconsistent with the construction given the statute by the Commission in this case, the following being quoted from the joint brief filed by the Government and the Commission in No. 110:

> "The fact that, as to the points noted and other points, the shipments carried by him were few and separated, or varying in frequency, could not be taken as establishing that Fleming was no longer bona fide engaged in transportation to those points, if that was not the reasonable conclusion to be drawn therefrom, in view of the marketing characteristics of the industry and the fact that his service was not one for which there was steady demand. The fact, too, that Fleming's operations, as evidenced by shipments transported prior to the 'grandfather' date, were shown to have been conducted to certain points in a State only, could not be taken to establish that the operations he was bona fide engaged in were confined to those points, if such a conclusion would be in conflict with the real character of his operations made necessary by the marketing characteristics of the industry whose products he moved." (Br. 43)
>
> "• • • We do not think that the 'grandfather' clause can properly be interpreted as freezing a carrier's operations fast to be precise trips in fact made by him prior to the administrative hearing before the Commission; such a result is in conflict with even the literal language of the clause; that refers to operation on and since June 1, 1935, and there is every probability that no carrier will have made after the 'grandfather' date the identical trips made approximately at that date." (Br. 49)

Section 206(a) and would have accorded appellee operating rights, both as to commodities and territories, substantially broader than as reflected in the order enjoined by the lower court. In saying this, we are not to be understood as contending that mere inconsistency between reports of the Commission warrants judicial interference with its orders. However, when the question involved is purely one of statutory construction, it must necessarily follow that there is but one correct construction, and we point to the reasoning in the *George Cassens* and in the *Fleming cases* as supporting our own views as to what is the correct construction of the statute.

V. THE LOVING CASE IS NOT DECISIVE OF THE QUESTIONS INVOLVED IN THIS CASE.

In the briefs of the Government (pp. 13-15) and of the Commission (pp. 16-19), it is argued that the *per curiam* opinion of this Court in *Loving* v. *United States,* 310 U. S. 609, affirming the judgment of the lower court which dismissed a complaint against an order of the Commission, arising under the "grandfather" clause of Section 206(a), is decisive of and controlling in this case. We respectfully submit that it is not.

In *Loving Common Carrier Application,* 12 M. C. C. 571, the applicant sought a certificate authorizing the transportation of general commodities via irregular routes in the states of Oklahoma, Kansas, Colorado, Texas and New Mexico. That report shows that Loving offered proof as to only 30 shipments for the whole of the territory as compared with the hundreds of shipments covered by the evidence in this case. Of the 30 shipments shown in the *Loving case,* 23 originated at or were destined to Oklahoma City, Oklahoma, or Denver, Colorado. The only service shown to or from

Kansas consisted of one trip from Lawrence, Kansas, to Tulsa, Oklahoma, one trip from Denver, Colorado, to Liberal, Kansas, and one trip from Wichita, Kansas, to Denver, Colorado. No service at all was shown as having been rendered to or from New Mexico. Some few trips were shown to or from Texas prior to June 1, 1935, but none of these occurred after June 1, 1935, except one trip in August and another trip in September, 1937. The Commission, in effect, treated the Texas service as having been abandoned.

The Commission held that the extremely limited service to Kansas and the lack of any service to New Mexico, did not justify a finding as to bona fide operations. However, the applicant was given a certificate between *all* points in Oklahoma on the one hand, and all points in Colorado on and east of Highway 87 on the other, although the number of points in either the territory of origin or destination which had received an actual service were few in number, especially as compared with the points of origin and destination shown in this case.

It fairly appears on the face of the report, that Loving was given all the territory to which he was entitled under the construction of Section 206(a) for which we are contending in this case.

The Commission did limit Loving to seven commodities although it authorized him to transport any one of the commodities to or from any destination to which he was authorized to transport any other commodity. The only commodities excluded from the order which Loving had ever handled between Oklahoma and Colorado, were cottonseed cake and beans, as to which the record showed evidence of only a single shipment as to each commodity prior to the statutory date. The Com-

mission included within the commodities authorized all those which the report showed had been generally solicited.

There is nothing on the face of the report in the *Loving case* to show the misconstruction of the statute of which we here complain. The court proceeding in that case involved primarily questions of fact. The only possible question of law was as to whether a *theoretical* holding out unaccompanied by a showing of any real operations constituted proof of a common carrier status under the "grandfather" clause of Section 206(a). This Court apparently took that same view of the case as is evidenced by the authorities cited in its *per curiam* opinion.

The *Loving case* does not control any one of the questions involved in this case. We have on the face of the report in this case an announced construction of the Act which is not in accord with correct legal principles. Furthermore, we have an absence of necessary preliminary findings, and a lack of evidence to support the finding which the Commission did make as to a carrier's undertaking being limited to the points actually served and the commodities actually carried. In addition, the Commission proceeded in this case upon a distinction between irregular route and regular route carriers which is not warranted by the statute. Finally, in this case, the Commission limited much of the authority to a point to point service, that is, between fixed termini, although under the statute it was obligated to provide for territorial operations.

Conclusion.

The Commission misconstrued the Motor Carrier Act and, in limiting appellee to the operating rights provided for in the order complained of, exceeded its statutory authority. It is therefore respectfully submitted that the decree of the District Court should be affirmed.

HARRY F. GILLIS,
Washington, D. C.

LUTHER M. WALTER,
JOHN S. BURCHMORE,
NUEL D. BELNAP,
Chicago, Illinois,
As Amici Curiae.

January 5, 1942.

APPENDIX.

Statutes involved.

The pertinent provisions of the Motor Carrier Act, 1935, applicable at the date of the Commission's order, July 10, 1940 (c. 498, 49 Stat. 543; c. 811, 52 Stat. 1236) are as follows:

SEC. 203. [U. S. Code, Sup. V, title 49, sec. 303.] (a) As used in this part—

* * * * *

(14) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of part I.[1]

SEC. 206. [U. S. Code, Sup. V, title 49, sec. 306.] (a) Except as otherwise provided in this section and in

[1] By the Transportation Act of 1940, approved September 18, 1940 (54 Stat. L. 898, 920), Section 203(a)(14) was amended to read as follows:

"The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I."

section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in conection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207(a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful:

* * *

SEC. 208. [U. S. Code, Sup. V, title 49, sec. 308.] (a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified

routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204(a)(1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

SEC. 209. [U. S. Code, Sup. V, title 49, sec. 309.] (a) Except as otherwise provided in this section and in section 210a, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business: *Provided,* That, subject to section 210, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or, if engaged in furnishing seasonal service, only, was in bona fide operation on July 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section

and within one hundred and twenty days after this section shall take effect and if such carrier was registered on July 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such permit. Otherwise the application for such permit shall be decided in accordance with the procedure provided for in paragraph (b) of this section and such permit shall be issued or denied accordingly. Pending determination of any such application the continuance of such operation shall be lawful. Any person, not included within the foregoing provisions of this paragraph, who or which is engaged in transportation as a contract carrier by motor vehicle when this section takes effect, may continue such operation for a period of one hundred and twenty days thereafter without a permit and, if application for such permit is made within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission: *Provided further,* That nothing in this part shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national park or national monument of the United States.

(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to section 210, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform

the service of a contract carrier by motor vehicle, and to conform to the provisions of this part and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit will be consistent with the public interest and the national transportation policy declared in the Act; otherwise such application shall be denied. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the Commission under section 204(a)(2) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his or its equipment and facilities, within the scope of the permit, as the development of the business and the demands of the public may require.

SUPREME COURT OF THE UNITED STATES.

No. 197.—October Term, 1941.

The United States of America and Interstate Commerce Commission, Appellants, vs. Carolina Freight Carriers Corporation.	Appeal from the District Court of the United States for the Western District of North Carolina.

[March 2, 1942.]

Mr. Justice Douglas delivered the opinion of the Court.

This is an appeal under § 210 (28 U. S. C. § 47a) and § 238 of the Judicial Code as amended (28 U. S. C. § 345) to review a final decree of a district court of three judges (28 U. S. C. § 47) which set aside (38 F. Supp. 549) an order of the Interstate Commerce Commission (24 M. C. C. 305) granting appellee a certificate of public convenience and necessity as a common carrier by motor vehicle under the so-called "grandfather clause" (§ 206(a)) of the Motor Carrier Act of 1935 (49 Stat. 543, 551, 49 U. S. C. § 306), now designated as Part II of the Interstate Commerce Act. 54 Stat. 919.

Appellee's predecessor applied for such a certificate authorizing operation as a "common carrier" by motor vehicle of "general commodities"[1] between all points "in South Carolina, North Carolina, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, those in Virginia east of and including the Shenandoah Valley, those in Maryland and Pennsylvania on and east of U. S. Highway 11, and those in New York east of Binghamton and south of Albany; and between Cherryville (N. C.) and Boston, Mass., through Henderson, N. C., Richmond, Va., Baltimore, Md., Philadelphia, Pa., and New York, over irregular routes." The Commission authorized the issuance of a certificate but restricted its scope in three ways. (1) It cut down the geographical area which could be served by appellee and in parts of that area

[1] With the exception of "commodities of unusual value, those in bulk, those requiring special equipment such as tank or refrigerator trucks, those injurious to other lading, live stock, automobiles and high explosives."

limited the service to designated points. (2) It allowed appellee to haul only certain specified commodities out of a larger list previously hauled. (3) It did not permit appellee to haul all of those specified commodities between all of the points in the authorized territory but allowed it to haul only certain commodities between given points. Its finding containing those restrictions (24 M. C. C., p. 309-310) reads as follows:

"We find that applicant's predecessor in interest was on June 1, 1935, and continuously since it and its predecessor have been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce (1) of cotton yarn from all points in Gaston, Lincoln, Cleveland, Rutherford, McDowell, Burke, Catawba, Alexander, Iredell, Rowan, Davidson, and Davie Counties, N. C., to Hagerstown, Md., New York, N. Y., Pawtucket and Providence, R. I., all points in Pennsylvania on and east of U. S. Highway 11, and points in Middlesex, Union, Essex, Hudson, Passaic, Bergen, Somerset, and Morris Counties, N. J., (2) of asbestos textile products from Charlotte, N. C., to Philadelphia and North Wales, Pa., Trenton, Newark, Passaic, and Paterson, N. J., New York, N. Y., Middletown, Conn., Providence and Pawtucket, R. I., and Boston and Hudson, Mass., (3) of supplies and materials used in the manufacture of asbestos textile products from Harrison and Perth Amboy, N. J., to Charlotte, N. C., and empty spools and boxes in the reverse direction, (4) of petroleum products in containers from Sewaren, N. J., and Marcus Hook, Pa., to Columbia and Greenville, S. C., and to all points in North Carolina, (5) of linoleum from Paulsboro, N. J., Marcus Hook, Pa., and East Walpole, Mass., to points in North Carolina and to Spartanburg and Greenville, S. C., (6) of canned goods from Baltimore, Md., to Shelby, N. C., (7) of beer and ale from Newark, N. J., to Gastonia and Wadesboro, N. C., and (8) of roofing and screen wire from York, Pa., to all points in North Carolina, all over irregular routes; that applicant is entitled to a certificate authorizing continuation of such operation; and that the application in all other respects should be denied."

The District Court held that such restrictions were not authorized by the statute. It said:

"It is, of course, reasonable to limit the certificate to the type of service rendered by the carrier during the grandfather period, and to limit the territory to that within which substantial service of that type has been rendered; but it is unreasonable to limit the certificate of one who has functioned as a general carrier to the specific commodities carried and the specific points served. The law cannot reasonably be construed as authorizing such limitation."

It further noted that such restrictions have not been imposed on regular route carriers and that Congress has made no such distinction between them and irregular route carriers like appellee.

I. We think the Commission was justified in the restrictions which it placed on the geographical scope of appellee's operations. Sec. 206(a) of the Act authorizes the Commission to issue a certificate without a showing of public convenience and necessity if the carrier or its predecessor in interest was "in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time". Sec. 208(a) requires that the certificate specify "the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate." It is clear from these provisions that the power of the Commission to authorize future operations within a designated "territory", rather than over specified routes or between fixed termini, fits the peculiar requirements of irregular route operators such as appellee. Authority to operate within a specified "territory" may include permission to service all points in that area. On the other hand it may be restricted to designated points therein. Or as in the instant case, it may extend to all points in a part of that area and to selected localities in another part. The precise delineation of the area or the specification of localities which may be serviced has been entrusted by the Congress to the Commission. *Alton R. R. Co.* v. *United States*, 314 U. S. —. The Act provides the test of "bona fide operation". That standard carries the connotation of substantiality. It also makes clear that a holding out to serve a specified area is not alone sufficient. It is "actual rather than potential or simulated service" which is required. *McDonald* v. *Thompson*, 305 U. S. 263, 266. Substantial, as distinguished from incidental, sporadic, or infrequent, service is required. Substantial service actually rendered may have been confined to narrow limits. *Loving* v. *United States*, 32 F. Supp. 464, aff'd 310 U. S. 609. Ability to render the service throughout the wide reaches of the territory, which the applicant professed to be willing to serve, may not have existed. Furthermore, the characteristics of the transportation service rendered are relevant to the territorial

scope of the operations which the Commission may authorize. *Alton R. R. Co.* v. *United States, supra.* In addition, the Commission in determining the precise territory which may be served by a particular carrier cannot be unmindful of its responsibility to coordinate the various transportation agencies which constitute our national transportation system. S. Rep. No. 482, 74th Cong., 1st Sess.; H. Rep. No. 1645, 74th Cong., 1st Sess. This does not mean that the right to the statutory grant may be withheld or cut down because the Commission disapproves of the competitive conditions which may be created if the application is granted. But its responsibility to bring greater order and stability to the transportation system than had earlier obtained (S. Doc. No. 152, 73d Cong., 2d Sess.) is an additional reason for its insistence upon a showing of substantial service in that territory which is sought to be covered by a certificate under the "grandfather clause".

As we indicated in *Alton R. R. Co.* v. *United States, supra,* the purpose of the "grandfather clause" was to assure those to whom Congress had extended its benefits a "substantial parity between future operations and prior *bona fide* operations". We cannot say that that was denied in this case, if the limitations on the territorial scope of the operations are alone considered. While service to and from all points in the States included in the application was not allowed, the reduction was determined by the standard of substantiality of service. And consideration was given to the characteristics of irregular route carriers and their role in the national transportation system. That involved a weighing of specific evidence in light of the complexities of this transportation service. The judgment required is highly expert. Only where the error is patent may we say that the Commission transgressed. That is not this case.

II. We have doubts, however, as to the restrictions which the Commission has placed on the articles which appellee may carry. Sec. 203(a)(14) defined[2] the term "common carrier by motor vehicle" as one who "undertakes . . . . to transport passengers or property, or any class or classes of property, for the gen-

[2] In 1940 Congress amended § 203(a)(14) to read: "The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, ..." Act of Sept. 18, 1940, c. 722, §18(a), 54 Stat. 920. The earlier definition of "common carrier" was in force at the time of the hearing of this case before the Commission.

eral public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes". The Commission ruled that since a "common carrier" may transport only a "class or classes of property", the authority granted under the "grandfather clause" of § 206(a) "should reflect any limitation in the undertaking" of the common carrier "as indicated by the service actually rendered on and since the statutory dates." It accordingly proceeded to eliminate commodities which, though of the same general class as the others, had been carried before but not after June 1, 1935. It further restricted future operations to those commodities which prior and subsequent to June 1, 1935, had been carried in substantial amounts and with a degree of regularity. We would not disturb those conclusions if only a question as to the weight of the evidence was involved. But we are not satisfied that the Commission applied the proper criterion in reaching its conclusion that only specified commodities could be carried in the future.

Sec. 206(a) requires a showing that the applicant, or its predecessor, was "in bona fide operation as a common carrier" on June 1, 1935, and "since that time". By § 208(a) the certificate must specify "the service to be rendered" by the carrier. As we have noted, a "common carrier by motor vehicle" was defined in § 203(a)(14) as one who "undertakes" to transport "passengers or property, or any class or classes of property, for the general public". That definition is the same for irregular and regular route carriers. It is plain that a carrier's holding out and actual performance may be limited to a few articles only. That is to say he may be a common carrier only of a restricted number of commodities. See *Galveston Truck Line Corp.*, 22 M. C. C. 451, 467. Or the service actually rendered may have been confined to such a few commodities that his holding out or willingness to carry a much larger class may be disregarded. *Loving* v. *United States, supra*, was such a case. On the other hand, if the applicant has carried a wide variety of general commodities, he cannot necessarily be denied the right to carry others of the same class merely because he never carried them before. And where he has carried a wide variety of general commodities, he cannot necessarily be restricted to those which he carried with more frequency and in greater quantities than the others. See *H. B. Church Truck Service Co.*, 27 M. C. C. 191, 197; *Highway Motor Freight Lines,*

Inc., 23 M. C. C. 621, 636. The Commission may not atomize his prior service, product by product, so as to restrict the scope of his operations, where there is substantial evidence in addition to his holding out that he was in "*bona fide* operation" as a "common carrier" of a large group of commodities or of a whole class or classes of property. There might be substantial evidence of such an undertaking though the evidence as to any one article was not substantial. The broad sweep of his prior service may indeed have made the carriage of any one commodity irregular and infrequent. Yet viewed as a whole rather than as a group of separate and unrelated items, his prior activities may satisfy the test of "bona fide operation" as a "common carrier" within the scope of his holding out. The fact that some of the articles may have been carried before but not after June 1, 1935, may of course indicate an abandonment of the prior undertaking. See *United States* v. *Maher*, 307 U. S. 148. But it does not necessarily mean that they should be stricken from the certificate, since the natural and normal course of his business may reveal a continuous undertaking to transport any or all commodities embraced within the group or the class. That is to say, he may have been a common carrier of a large group of general commodities or of an entire class of property both before and after the critical date though the specific commodities carried varied considerably. The questions are whether his service within the territory in question was sufficiently regular and whether his coverage of commodities was sufficiently representative to support a finding that he was in "bona fide operation" as a "common carrier" of the group of commodities or of the class or classes of property during the periods in question.

The Commission in this case authorized the carriage of about a dozen kinds of commodities though in prior operations about three times that number had been carried. It is not our function to weigh the evidence. Hence we intimate no opinion as to whether more commodities should have been included had the proper criterion been employed. But we conclude that there is no statutory warrant for applying to irregular route carriers a different or stricter test as to commodities which may be carried than is applied to regular route carriers. The difference between those types of carriers may well justify a sharp delimitation of the far flung territory which an irregular route carrier may profess to serve. But once the territory has been defined, the statutory test of whether an applicant was a "common carrier" by motor vehicle in "bona

fide operation" during the critical periods is the same for the irregular and the regular route carrier. We are not confident that the Commission has approached the problem in that way. For it has repeatedly stated beginning with *Powell Brothers Truck Lines, Inc.*, 9 M. C. C. 785, 791-792, that:

"'Authority to transport general commodities throughout a wide territory over irregular and unspecified routes pursuant to the 'grandfather' clause of the act should be granted to a carrier only when such carrier's right thereto has been proved by substantial evidence. To do otherwise would create the very ills which regulation is designed to alleviate, namely, congestion of highways, destructive rate practices, and unbridled competition. Common carriers which are expected to maintain regular service for the movement of freight in whatever quantities offered to and from all points on specified routes cannot operate economically and efficiently if other carriers are permitted to invade such routes for the sole purpose of handling the cream of the traffic available thereon in so-called irregular-route service."

And see *Merchants Parcel Delivery Co., Inc.*, 21 M. C. C. 93; *Langer Transport Corp.*, 23 M. C. C. 302; *Lett & Co. of Indiana, Inc.*, 26 M. C. C. 159.

Insofar as that view establishes a different test for commodities which may be carried by irregular route operators than for commodities which may be carried by regular route operators it is erroneous as a matter of law. For facts sufficient to establish that a person is a "common carrier" by motor vehicle in "bona fide operation" in the one case are sufficient in the other. The statutory differences lie only in the territorial scope and pattern of the operation.

III. It follows from what has been said that a restriction on commodities which may be carried between specified points may not always be justified. If the applicant had established that it was a "common carrier" for a group of commodities or for an entire class or classes of property and was in "bona fide operation" during the critical periods in a specified territory, restrictions on commodities which could be moved in any one direction or between designated points would not be justified. The fact that a particular commodity had never been transported between certain points in that territory would not mean that authority to haul it between them should be withheld. Likewise, if the applicant could establish that it was a "common carrier" only of a limited number of commodities, there would normally be no statutory sanction for

limiting the carriage of particular commodities in that group to specified points in the authorized area. Presumptively one who had established his status of "common carrier" would be entitled to carry all of the commodities embraced in his undertaking to all points to which any shipments of any articles were authorized. On the other hand, an applicant's status may vary from one part of the territory to another or be different in northbound shipments than in southbound shipments. Thus in this case the Commission found that practically all of appellee's northbound shipments consisted of cotton yarn, though a few shipments of other commodities such as tires and tubes, asbestos textile products, spools and empty boxes were also made northbound. With the exception of tires and tubes, the Commission authorized the shipments of those products on northbound trips. Assuming that finding to be justified under the tests which we have described, it does not necessarily follow that the northbound destinations of those particular commodities should be restricted to the localities designated by the Commission. Once the common carrier status of appellee had been established as respects those commodities, shipments to any parts of the authorized territory, or to any of the authorized points therein, should have been permitted, in absence of evidence that the appellee as respects carriage between specified points had restricted its undertaking to particular commodities. That problem is clearer in this case as respects southbound shipments. The record is plain that appellee held itself out as being willing and able to carry a wide variety of commodities on its return trips to its home base in North Carolina. And the record shows that it carried many different kinds of articles on those southbound journeys. But the Commission drastically limited its rights in that regard. Thus it was permitted to carry beer from Newark, N. J. to two points in North Carolina but not from Baltimore, Md. In absence of evidence that it had thus limited its undertaking as respects beer, the mere fact that it previously had not carried beer from Baltimore would be immaterial. If it had established by substantial evidence that it was a "common carrier" of beer on southbound trips, it would be entitled to carry it from any of the northern points to any of the southern destinations. For there was no evidence in this case that it had restricted its undertaking as respects beer to shipments from Newark, unless the fact that it had carried beer only from that point is to be conclusive. But to say that that was conclusive or

controlling would be to disregard the natural and normal course of business shown by this record. So far as southbound shipments are concerned, it is plain that a wide variety of articles was transported consistently with appellee's holding out that it would carry any of the articles from any of the points. Appellee's "bona fide operation" may possibly be limited only to those articles actually carried. But where it was actively soliciting whatever it could get at any of the points, it does violence to its common carrier status to make the origin or destination of future shipments conform to the precise pattern of the old. Such a pulverization of the prior course of conduct changes its basic characteristics. There is no statutory sanction for such a procedure.

IV. To appellee such matters involve life or death. Empty or partially loaded trucks on return trips may well drive the enterprise to the wall. A restriction in this case of the commodities which may be carried from any one point on southbound trips is a patent denial to appellee of that "substantial parity between future operations and prior bona fide operations" which the Act contemplates. *Alton R. R. Co.* v. *United States, supra.* Its prior opportunity should not be restricted beyond the clear requirements of the statute. For this Act should be liberally construed to preserve the position which those like appellee have struggled to obtain in our national transportation system. To freeze them into the precise pattern of their prior activities as was done here not only may alter materially the basic characteristics of their service; it also may well be tantamount to a denial of their statutory rights.

The precise grounds for the Commission's determination that only certain commodities could be carried and that only a few could be transported between designated points are not clear. It is impossible to say that the standards which we have set forth were applied to the facts in this record. Hence, as in *Florida* v. *United States,* 282 U. S. 194, 215, the defect is not merely one of the absence of a "suitably complete statement" of the reasons for the decision; it is the "lack of the basic or essential findings required to support the Commission's order." And see *United States* v. *Baltimore & Ohio R. R. Co.,* 293 U. S. 454, 464; *United States* v. *Chicago, M., St. P. & P. R. Co.,* 294 U. S. 499, 510-511. Congress has made a grant of rights to carriers such as appellee. Congress has prescribed statutory standards pursuant to which

those rights are to be determined. Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen. Congress has also provided for judicial review as an additional assurance that its policies be executed. That review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process. If, as seems likely here, an erroneous statutory construction lies hidden in vague findings, then statutory rights will be whittled away. An insistence upon the findings which Congress has made basic and essential to the Commission's action is no intrusion into the administrative domain. It is no more and no less than an insistence upon the observance of those standards which Congress has made "prerequisite to the operation of its statutory command." *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S. 126, 144. Hence that requirement is not a mere formal one. Only when the statutory standards have been applied can the question be reached as to whether the findings are supported by evidence. That is why we cannot say that the Commission would be justified in placing the same restrictions on the certificate in this case had a correct construction of the Act been taken.

We express no opinion on the scope of the certificate which should be granted in this case. That entails not only a weighing of evidence but the exercise of an expert judgment on the intricacies of the transportation problems which are involved. That function is reserved exclusively for the Commission. *United States* v. *Maher, supra; Alton R. R. Co.* v. *United States, supra.* Our task ends if the statutory standards have been properly applied.

Affirmed.

Mr. Justice JACKSON, dissenting.

Mr. Justice FRANKFURTER and I are unable to agree with this disposition of the case.

It overturns the exercise of a discretion which Congress has delegated to the Interstate Commerce Commission upon grounds

which seem to us so unsubstantial as really to be a reversal on suspicion. The function of determining "grandfather" rights delegated in this case is not unlike the function dealt with in *Gray* v. *Powell*, 314 U. S. —, in which we said that Congress could have legislated specifically as to individual exemptions "but found it more efficient to delegate that function to those whose experience in that particular field gave promise of a better informed, more equitable adjustment of the conflicting interests." We held that this delegation will be respected and that unless we can say that a set of circumstances deemed by the Commission to bring a particular applicant within the concept of the statute "is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment, it is the Court's duty to leave the Commission's judgment undisturbed." While the Court pays lip service to this principle the Commission's decision is upset because, as the opinion states, "We have doubts"; "We are not confident"; and "We are not satisfied." The opinion proceeds as it might do with a burden upon the Commission, although we supposed the burden to be upon those who complain of an administrative decision to satisfy the Court that the decision is wrong—particularly one dealing with an exemption from a general duty.

We do not agree that a remand to the Commission to make specific findings of the kind required in *Florida* v. *United States*, 282 U. S. 194, 215, is appropriate. In the *Florida* case, the Commission undertook to revise intrastate railroad rates under control of the state and over which, as Chief Justice Hughes said, "the Commission has no general authority." 282 U. S. at 212. It was required to support its jurisdiction to revise rates not within its general control by specific findings as to whether those rates in any way constituted a burden on interstate commerce. The Court had earlier established the rule that an order of the Commission should not be given precedence over a state rate statute otherwise valid "unless, and except so far as, it conforms to a high standard of certainty." *Illonis Central R. R. Co.* v. *Public Utilities Commission*, 245 U. S. 493, 510. And in this connection the Court pointed out that even an act of Congress is not to be construed to supersede or suspend the exercise of the reserved powers of the state, even where the Constitution permits, "except so far as, its purpose to do so is clearly manifested." It is one

thing to require the Interstate Commerce Commission to be explicit in finding jurisdictional facts before it invades conceded state power. It is a wholly different thing to read with a hostile eye the Commission's findings that a claim for exemption from conceded federal regulatory authority has not been sustained.

Furthermore, if after this case is returned to the Commission, the Commission should leave no room for doubt that in making the challenged order it acted upon correct notions of law, it may yet be upset because the Court says its findings are not sustained by the evidence, it had better be said now. We have here a small record and simple facts, which are all before us, giving adequate basis for concluding whether these facts as found by the Commission warranted the order. On this record it is plain what the Commission has done. The only question is—Can it do what it has done? To send the case back to the Commission to be reconsidered or to say that it has already been considered in the light of the legal views which the Court expresses, and then, perhaps, to say that in any event the order is not warranted on the record before us, is really to invite the Commission to express abstract views on law. What this amounts to is that the Court refuses to tell the Commission what it thinks about the evidence until the Commission tells what it thinks about the law. We cannot regard this as the most helpful use of the power of judicial review.

Congress by the Motor Carrier Act of 1935 cast upon the Commission the task of regulating the motor carrier industry. By the enactment, Congress asserted that the public interest in the motor carrier enterprise had become paramount to private interests. The highly individualistic nature of the business and the easy terms upon which equipment could be obtained had promoted a quick growth accompanied by intense and uneconomic competition, both within itself and with other transportation systems. It was not expected that a sprawling, chaotic, and cutthroat industry that had developed entirely in the private interest would be reduced to an orderly and regularized system of transportation in the public interest without stepping on a good many individual toes.[1]

In trying to limit the injury caused by transition from a purely private enterprise to a regulated public service industry, the gen-

[1] See Report of Joseph B. Eastman, Federal Coordinator of Transportation, on the Regulation of Transportation Agencies other than railroads. Sen. Doc. No. 152, 73rd Cong., 2nd Sess., p. 13 *et seq.*

See also Report of the Committee on Interstate Commerce on the Motor Carrier Act 1935, Sen. Rep. No. 482, 74th Cong., 1st Sess.

eral plan was to preserve to private owners the transportation values evidenced by actual conditions of operation on June 1, 1935, and to exempt them from meeting the requirements of "public convenience and necessity" as to such operation. Those who obtained such "grandfather" rights are not, however, limited to them. They may expand their territory or extend their service by proving that public convenience and necessity will be served thereby. Thus, the scramble for "grandfather" rights represents the effort to pre-empt territory and service privileges without submitting to the test of the public interest. Public regulation would be defeated at its very outset if the Commission permitted the bulk of the industry to escape the public interest test by inflated claims under the "grandfather" clause. The nature of the general task of reducing the claims of "grandfather" rights to defined and reasonable limits consistent with the plan of public regulation is disclosed by the record in this case.

The motor carrier here asked as a matter of right that the Commission certify its "grandfather" privileges to include the carriage of general commodities in a territory comprising substantially the Atlantic seaboard from South Carolina to Massachusetts. That there was some disparity between its hopes and its experience was indicated by the fact that on June 1, 1935, it was operating eight trucks, and by 1936, the number of usable vehicles had fallen to four. After a change of ownership the number was increased and at the time of hearing the applicant was operating seventeen carrying units.

This carrier did not operate at stated times or over regular routes, but was an irregular route carrier. The backbone of its business consisted of carriage of cotton yarn from points of origin in the South to points of distribution in the North. Incidental to this carriage it was ready to accept cargo of almost any kind to complete its loads and particularly to provide earnings on return trips. If satisfactory terms could be arrived at, it was willing to carry almost anything almost any place. On the basis of such general holdings out this carrier sought certificates that would entitle it as a matter of right to carry nearly everything within the territory described.

The Commission cut down the claims of the applicant by the use of the standard which the Act prescribes: namely, *bona fide* operation as a common carrier by motor vehicle. The Commission re-

duced the territorial claim to that which the carrier actually served with some regularity and lopped off territory which had been served only occasionally or by isol ted trips. It limited the commodities to be carried to those carried in substantial volume during the period before and after June 1, 1935. We find no basis upon which we can say as matter of law that these general methods of reducing nebulous and extravagant claims to a compass which the Commission could properly certify as representing *bona fide* operation are improper or other than those contemplated by the statute.

The Court is "not confident" that the Commission applied to this irregular route carrier the same test as to commodities that is applied to regular route carriers. We cannot be so confidently unconfident. The Commission seems to have made only the distinction between irregular and the regular route carriers that results from the differences inherent in the two types of enterprise. The Commission has tested both by the regularity and substantiality of their actual operations. It is a test with which they may have unequal ability to comply, but to reach different results on such different facts does not imply either the use of different legal standards or discriminatory administration.

The administrators of the Motor Carrier Act must be aware, as the framers of it were, that "the grandfather clause as of June 1, 1935 has been fixed in fairness to *bona fide* motor carriers now operating on the highway and limited so as to prevent speculation which is highly important." Report of the Committee on Interstate and Foreign Commerce, H. R. No. 1645, 74th Cong., 1st Sess., p. 4. When a carrier claims grandfather rights to serve the entire Atlantic seaboard as a general common carrier with equipment consisting on the critical date, of eight trucks, the Commission is obviously forewarned that it must guard against granting franchise privileges that will result in their having a speculative value to the carrier rather than a service value to the public. The Commission was quite right to take the measure of the territory and service of such a claimant and to give him a certificate covering his actual substantial operations. We should not substitute our own wisdom or unwisdom for that of administrative officers who have kept within the bounds of their administrative powers. *A. T. & T. Co.* v. *United States*, 299 U. S. 232, 236.